Supreme Court, U.S.
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No. _____

In The Supreme Court of the United States

October Term, 1998

FUNDAMENTALIST CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, et al.,

Petitioners,

vs.

CYRIL BRADSHAW, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF UTAH

PETITION FOR WRIT OF CERTIORARI

RODNEY R. PARKER
SNOW, CHRISTENSEN & MARTINEAU
Attorneys for Petitioners
10 Exchange Place, 11th Floor
Post Office Box 45000
Salt Lake City, Utah 84145
Telephone: (801) 521-9000

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QUESTIONS PRESENTED FOR REVIEW

The issues presented are:

1. In the absence of fraud or misrepresentation, does awarding the equitable remedy of unjust enrichment against a church or its leaders constitute adjudication on the basis of neutral principles of secular law? This important question was left unresolved by *Jones v. Wolf*, 443 U.S. 595 (1979).

2. Does judicial application of a religiously neutral, generally applicable law to resolve a church property dispute necessarily constitute a resolution of the dispute in accordance with neutral principles of secular law? This important question was left unresolved by *Employment Division v. Smith*, 494 U.S. 872 (1990).

3. Must courts refrain from applying religiously neutral, generally applicable laws to church property disputes when refraining will reduce or eliminate church-state entanglements that inhibit religious beliefs or practices? This important question was left unresolved by *Agostini v. Felton*, 521 U.S. ___, 117 S.Ct. 1997 (1997).

LIST OF ALL PARTIES TO THE PROCEEDING

Defendants/Petitioners: Fundamentalist Church of Jesus Christ of Latter-Day Saints, United Effort Plan, Rulon T. Jeffs, Fred M. Jessop, LeRoy S. Jeffs, Parley J. Harker (deceased), James K. Zitting, Winston K. Blackmore, Truman I. Barlow.

Plaintiffs/Respondents: Cyril Bradshaw; Connell J. Bateman; Benjamin G. Bistline; Alma J. Burnham; Claude S. Cooke; Donald B. Cox; Harvey J. Dockstader; T. David Dockstader; Boyd Dockstader; Marko J. Dutson; George Hammon; Jacob Legrand Hammon; Merrill Harker; James M. Pipkin; Cora Fischer Stubbs; David L. Stubbs; Ray Timpson; Fayila Maureen Blackmore Williams; John M. Williams; Roger E. Williams; Thomas J. Williams; Don D. Timpson; John W. Timpson.

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REFERENCES TO DECISIONS BY LOWER COURTS

The trial court entered an unpublished Memorandum Decision and Order on January 11, 1996 (Appendix A); and an unpublished Memorandum Opinion on September 5, 1996 (Appendix B).

The Utah Supreme Court entered its decision on September 1, 1998. The decision is published as *Jeffs v. Stubbs*, 1998 WL 566069, 351 Utah Adv. Rep. 3, ___ P.2d ___ (Utah 1998). (Appendix C.)

GROUNDS FOR SUPREME COURT JURISDICTION

The Utah Supreme Court's decision was entered September 1, 1998. Petitioners filed a timely petition for rehearing which was denied November 18, 1998. (Appendix D.) The Supreme Court has jurisdiction to review the decision by writ of certiorari pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS AT ISSUE

The First Amendment to the United States Constitution provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

STATEMENT OF THE CASE

The Fundamentalist Church of Jesus Christ of Latter-Day Saints ("FLDS Church" or "Church") is a continuation of a religious movement, initially known as the "Priesthood Work," which subscribes to fundamentalist "Mormon" religious principles.

In 1942, the leaders of the Priesthood Work adopted a written Declaration of Trust establishing the United Effort Plan trust ("UEP") (Appendix F). The leaders created the UEP to implement the religious principle of the Law of Consecration and Stewardship, also known as the "United Order," set forth in the Church's constitution. The principle calls for a people gathered together on consecrated ground, united in faith, living under the direction of religious leaders. The trial court found that the UEP is a religious institution. The trust holds title to property consecrated by donation to the Priesthood Work and is charged with responsibility for administering the land to accomplish the religious purposes to which the property is dedicated. The individual petitioners are trustees of the UEP.

The UEP now owns most of the land that comprises the Hildale, Utah and Colorado City, Arizona communities and some 5,000 church members live on trust property. The trial court found that, according to the teachings and beliefs of the Church, "the UEP constituted a communal effort to build up the Kingdom of God on Earth by developing a community for the adherents to occupy." The trial court also found that the use of UEP land was "conditioned upon religious beliefs commonly held and widely known in the community." Those beliefs included the teaching that the purpose of the UEP was to advance the group toward the United Order by

providing for management of use of the land by a "benevolent and inspired group of God fearing leaders."

The Church, the Trust, and the other petitioners here were defendants in this action, filed by 20 former members of the Church. Although many claims were asserted in the case,[1] the case was essentially an action for possession of the land and for distribution of the UEP trust.

The trial court bifurcated the case and all claims except breach of fiduciary duty, accounting, and distribution of trust were tried to the court for six weeks in December, 1994 and May, 1995. The court issued a 112 page Memorandum Decision on January 11, 1996, which along with a later Memorandum Opinion of September 5, 1996, are the court's findings of fact and conclusions of law. In the findings, the court confirmed the religious nature and mission of the UEP and rejected all of the plaintiffs' claims except unjust enrichment. On the basis of unjust enrichment, the court granted each plaintiff except Fayila Williams a lifetime right to occupy land owned by the UEP. The court subsequently granted summary judgment to the UEP and its trustees on the fiduciary, accounting, and distribution claims.

These issues were raised in appellants' Answer (R. 1288-89), preserved in the Pre-Trial Order (R. 1565), and asserted again in appellants' Post-Trial Memorandum (R. 1695-96, 1713) and Motion to Dismiss (R. 1993-98). The trial court ruled on the issues in its memorandum opinion (R. 1828). (Pertinent excerpts from these documents are set forth

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[1] Plaintiffs' claims were (1) breach of express contract, (2) breach of implied contract, (3) negligent misrepresentation, (4) constructive fraud, (5) estoppel, (6) unjust enrichment/occupying claimants, (7) breach of fiduciary duty, (8) accounting, and (9) distribution of the UEP trust

in Appendix E.) Petitioners also raised these issues at the state supreme court level in their briefs and in their Petition for Rehearing.

The FLDS Church traces its roots to the beginnings of the Mormon Church in the 1830s. Members of both churches accept the Bible, the Book of Mormon, the Doctrine and Covenants ("D. & C.")[2], and the Pearl of Great Price as holy scripture. Members of the FLDS Church believe that their Church is the true continuation of the church founded by Joseph Smith in 1830. The split occurred around the turn of the century when the Mormon Church, under great pressure from the Federal government, abandoned certain beliefs which members of the FLDS Church believe were ordained by God, including the Law of Consecration and Stewardship (D. & C. 42:30-39) and the principle of plural marriage (D. & C. 132:61-62).

It is the Law of Consecration and Stewardship (also known as the United Order of Heaven) which is at issue in this case. The Law, which in its present form dates to 1831, is set forth in Section 42 of the Doctrine and Covenants. One author has explained the Law as follows:

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[2] The beliefs at issue in this case derive primarily from the Doctrine and Covenants.

> The Doctrine and Covenants is a compilation of revelations, most of which were received by the Prophet Joseph Smith for the establishment and governance of the Kingdom of God in the latter days. It is a standard work of the Church and functions as its open, ever-expanding, ecclesiastical constitution.

1 D. Ludlow, ENCYCLOPEDIA OF MORMONISM 405 (1992).

> Upon the basic principle that the earth and everything on it belongs to the Lord, every person who was a member of the church at the time the system was introduced or became a member thereafter was asked to "consecrate" or deed all his property, both real and personal, to the bishop of the church. The bishop would then grant an "inheritance or "stewardship" to every family out of the properties so received, the amount depending on the wants and needs of the family, as determined jointly by the bishop and the prospective steward. . . . It was expected that in some cases the consecrations would considerably exceed the stewardships. Out of the surplus thus made possible the bishop would grant stewardships to the poorer and younger members of the church who had no property to consecrate.

L. Arrington, F. Fox & D. May, BUILDING THE CITY OF GOD 15 (1976) (footnote omitted). The principle is also set forth in the Bible[3] and in the Book of Mormon.[4]

UEP property is not managed by secular rules to promote temporal or commercial gain. The trial court found that "[t]he property was intended to be used to benefit those that the trustees chose as beneficiaries in the future according to the 'just wants and needs' of the beneficiaries" at the time, consistent with the Law of Consecration and Stewardship as taught in scripture.[5] Young men who have proven themselves worthy approach one of their religious leaders and re-

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[3] Acts 4:32-35. In addition, the story of Ananias and Sapphira in Acts 5 demonstrates application of the law of consecration by Peter.

[4] 4 Nephi 2-3.

[5] *Doctrine & Covenants* 82:17 (Ex. T96).

quest the use of a "lot" on UEP property. If the leaders judge the applicant worthy, he is invited to build a home on UEP property, with the help of the religious order. The invitation occurs in a religious context between the member and the Bishop, and no documentation accompanies it. The resulting homes are consecrated and dedicated to the UEP and the Church in order to further Church's religious implementation of the Law of Consecration and Stewardship. Since the UEP's formation, the use and occupancy of all UEP property, including residential lots assigned to the faithful, has been determined by the religious leadership of the Church.

Between 1942 and 1979 each of the plaintiffs moved onto UEP property as a way to participate in the religious program of the Church. The homes occupied by the plaintiffs were constructed with community help and the individual labor and material contributions of the plaintiffs.

A religious schism developed in the group, which came to a head in the mid-1980s, raising for the first time the issue of dissidents' rights in trust property. The resulting religious conflict was in part expressed by the demand of the dissidents that the trust be dissolved and that parcels of UEP land be distributed to each occupant. Plaintiffs were part of the dissident group. The UEP asserts that the plaintiffs are tenants at will on its property, and that the UEP retains the full panoply of ownership rights in the property. Those rights include the right to reserve UEP property for use only by faithful members of the FLDS Church.

The trial court heard testimony from every plaintiff, from the religious leaders, and from many other members of the community. From that evidence, the court found that the plaintiffs knew that "use of the land was conditioned upon religious teachings and beliefs commonly held and widely

known in the community." It found that the plaintiffs knew that they did not own the property and that complete information was available to all of the plaintiffs regarding the terms of their occupancy, including their status as tenants at will.

The plaintiffs' claims were primarily contractual in nature. The court rejected those claims, ruling:

> Nothing in the actions of the parties demonstrates a tacit agreement that the plaintiff would have anything other than the temporary use of the UEP lot until the Trustees determined that the benefit would be withdrawn. A contract does not arise from the unsubstantiated assumptions of one of the parties.

In detailed findings which the court used as the model for its findings regarding each plaintiff, the court found as follows regarding plaintiff Cyril Bradshaw:

> (a) Mr. Bradshaw was well aware that the UEP was governed by a Declaration recorded on the public records and had been prior to his association with The Work. He chose not to read it, even knowing that it might relate to his right, or privilege, of occupying a UEP lot. If he was mislead [*sic*] by lack of the information in the Declaration, he was as much at fault as the UEP.
>
> (b) Mr. Bradshaw was not specifically told that he would be a tenant at will on the UEP lot until he had already constructed improvements on the lot, nor did he ask. He was apparently satisfied that his "just wants and needs" would be met by his religious leaders and chose not to ask about the terms of his use of the land provided by the UEP. One who seeks relief because of injury from misrepresentations of another cannot simply believe

whatever is said. Such a person has a duty to exercise the degree of care to protect his own interests as would be exercised by any reasonable and prudent person under like circumstances. [See *Jardine v. Brunswick*, 423 P.2d 659, 662 (Utah 1967)]. To rely on one word in a conversation in a matter of this import is not reasonable.

(c) The Court is persuaded that Mr. Bradshaw and the other plaintiffs herein were aware, because of the purpose and nature of the movement they were with, that the Short Creek area was being developed as a refuge for the faithful adherents to The Work. Each plaintiff was invited to help build up the community and to practice his own religious beliefs there because he was in harmony with others living there.

If Mr. Bradshaw had read the Declaration which he knew was recorded in Mojave County, he would have learned that even if he was a member of the UEP, he could be expelled and loose [*sic*] all claim on the trust by a majority vote of the trustees for actions prejudicial to the trust, and that as a non-member beneficiary, he could be deprived of benefits conferred by the Trust in the event that the Trustees deemed it unwise to confer the benefit. Mr. Bradshaw cannot now claim misrepresentation because he didn't understand that if he fell out of harmony with the trustees of the trust his right to use trust land could be terminated. Such knowledge was widely available in the community to anyone who inquired.

(d) Mr. Bradshaw never testified that he made contributions to the UEP or its enterprises to gain an interest therein, nor did the other plaintiffs. The inference from their statements was that they considered their

contributions to be religious donations to The Work, although the UEP may have benefited.

> Mr. Bradshaw's motivation for his labor and money was to comply with the requests of his religious leaders, regardless of the ownership of the project. He never claimed in his testimony that he was mislead [*sic*] by the failure of the UEP to tell him that the trust did not own the projects he worked on. It simply was not a matter of concern to him when the contributions were made as they were religious contributions.

In spite of strong, individualized findings as to each plaintiff that they clearly understood that they did not own the property and that they were guests in a religious community; and in spite of the fact that the terms of occupancy were communicated in the form of religious scriptures and sermons, the trial court concluded that "[t]he UEP must bear a large share of the blame for the confusion as to the terms of occupancy since it did not communicate" those terms clearly to each plaintiff. The court determined that it would be unfair for the UEP to "acquire a large home suitable for housing another of its adherents at little or no cost" by removing a plaintiff. Acting under the theory of unjust enrichment, the court granted each of the plaintiffs[6] a conditional lifetime right of occupancy, and directed that if the UEP elects to end any plaintiff's occupancy for any reason, including on the basis of religious incompatibility with The

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[6] The court rejected the claims of plaintiff Fayila Williams on the basis that use of UEP land was granted only to the head of each household. Mrs. Williams did not deal directly with representatives of the UEP, as those dealings were with her now deceased husband. The court's denial of relief to Mrs. Williams was consistent with the court's award of life interests which were measured by the lives of the male heads of household in each family.

Work, the UEP must pay that plaintiff the amount of the benefit resulting to the UEP.

Petitioners appealed the trial court's decision to the Utah Supreme Court on several grounds. Petitioners argued that the trial court's decision to apply the law of unjust enrichment in this setting required the court to weigh the importance and fairness of religious beliefs, and amounted to prohibited meddling in the ecclesiastical decisions reserved to the leaders of the Church. The trial court made specific findings placing allocation of UEP property among members inside the protected realm of religious decision-making. Having done so, the court then impermissibly judged the fairness of the leaders' religious decisions, overturning those decisions in favor of its own, secular, standard of fairness.

The Utah Supreme Court rejected petitioners' arguments.[7] It assumed that petitioners' free exercise rights were burdened by the trial court's decision, but held that the plaintiffs' right to apply to the courts for relief is a fundamental right which supersedes the religious rights at issue, and that the state has a compelling interest in ensuring that all parties are able to resolve legal disputes before a neutral tribunal. 351 Utah Adv. Rep. at 9. The court did not address petitioners' argument that the ruling violated the principle of *Jones v. Wolf,* 443 U.S. 595 (1979), and the other "church property" cases because the trial court's intrusion into management of the trust could not have been neutral when judgments of fairness were made. The court held instead that "courts must treat property disputes between religious

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[7] In its decision, the Court asserted that petitioners had argued that disputes between religious entities were immune from judicial decision. That characterization seriously oversimplified and overstated the narrowly tailored arguments the Church and UEP made.

factions 'in the same manner they treat disputes among other voluntary associations.'" *Id.* at 10 (citation omitted).

In addition, the trial court decided that the UEP was a charitable trust under Utah law. This necessarily implied that the trust had no identifiable beneficiaries; thus, the plaintiffs could not be beneficiaries and the plaintiffs lacked standing to assert their trust claims. The trial court thus granted summary judgment on those claims. The Utah Supreme Court reversed the trial court's conclusion that the trust was charitable in nature, reinstated the trust claims, and remanded the case for determination (1) whether the plaintiffs are beneficiaries of the UEP with standing to assert those claims; and (2) if so, whether there has been a breach of fiduciary duty entitling the plaintiffs to an accounting or other relief.

REASONS WHY CERTIORARI SHOULD ISSUE

I. IN THE ABSENCE OF FRAUD OR MISREPRESENTATION, ACTIONS AGAINST A CHURCH OR ITS LEADERS CANNOT BE ADJUDICATED WITHOUT VIOLATING THE CONSTITUTIONAL PROHIBITION ON JUDICIAL INTERPRETATION OF RELIGIOUS DOCTRINE.

A. *Proper Application of an Equitable Remedy to Resolve a Church Property Dispute Necessarily Entails Judicial Interpretation of Church Doctrine.*

This Court has unambiguously and consistently held that courts may never adjudicate controversies between religious claimants when doing so would require judicial interpretation of the content or merits of a religious belief or practice. *Jones v. Wolf*, 443 U.S. 595, 607 (1979); *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 708-09

(1976); *Presbyterian Church v. Hull Church*, 393 U.S. 440, 449 (1969). Courts are constitutionally permitted to adjudicate church property disputes on the basis of "neutral principles of law," but only so long as no interpretation or consideration of religious doctrine is required. *Jones v. Wolf*, 443 U.S. 595, 602-04 (1979).

It is not religiously neutral for a court to resolve a church property dispute by ignoring the religious considerations that are at the heart of the dispute. An equitable remedy requires a court to balance considerations of justice weighing for and against each disputing party.[8] Application of equitable remedies is thus inherently judgmental and subjective. When such remedies are applied in a religious context, they would normally call for weighing the fairness of religious beliefs or practices that influenced one or both parties to the dispute to act as they did. Because of the constitutional prohibition against judicial interpretation of religious doctrine, however, a court cannot include in the equitable balance any considerations of justice that would require the court to interpret the content or merit of a religious belief or practice.

Thus, judicial use of an equitable remedy as a "neutral principle" of secular law to resolve church property disputes necessarily requires that courts ignore considerations tied to religious beliefs or practices, no matter how strongly these

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[8] *See, e.g.*, GEORGE L. CLARK, EQUITY § 33, at 49 (1945) (quoting PHELPS, JURIDICAL EQUITY § 138):

> "By juridical equity is meant a systematic appeal for relief from a cramped administration of defective laws to the disciplined conscience of a competent magistrate, applying to the special circumstances of defined and limited classes of civil cases the principles of natural justice, controlled in a measure as well by considerations of public policy as by established precedent, and by positive provisions of law."

might point to resolution in favor of one party or the other. But resolving a church property dispute on the basis of equitable principles by ignoring considerations of justice which favor one party to the dispute over another is not an appropriate deployment of either equitable or constitutional principles. A court applying an equitable remedy to a church property dispute has no choice but to refrain from weighing in the balance considerations of justice requiring the interpretation of religious doctrine. This use of equity, however, results in the "equitable" resolution of a dispute by a means that is, by definition, inequitable, because it excludes important and relevant considerations of justice from the balance. *Cf.* CLARK, *supra n.8*, § 32, at 48 (one of the most important maxims of equity is "[a] rule of equity will never be applied to reach an inequitable result").

This Court has stated that there might be various ways in which courts might properly adjudicate church property disputes. *See Jones*, 443 U.S. at 602; *Hull Church*, 393 U.S. 440, 449 (1969). This Court has held, however, only that awarding disputed church property to the holder of legal title on the basis of which faction departed from the church's original doctrine is *not* adjudication on the basis of a neutral principle of law, *see Hull Church*, 393 U.S. at 450, and that awarding disputed property to the holder of the legal title *is* adjudication on such basis, *see Jones*, 443 U.S. at 601, 603-04; *see also Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 723 n.15 (1976) (noting that the "formal title" doctrine does not apply because none of the disputed actions changed the legal title of the underlying church property). The expansion of the meaning of "neutral principles" from the formal title rule expressly approved in *Jones* to a rule that allows adjudication of church property disputes on the basis of something as indeterminate and wide-ranging as equitable principles has been undertaken by

some lower federal and state courts, but has never been considered by this Court.[9]

In giving religious dissidents life estates in UEP property and exempting them from the UEP's religious management, the court implicitly determined that the religious doctrine that had previously been the basis for the parties' relationship was unimportant. The trial court found that the purpose of the UEP "was to advance the group toward the United Order," and constituted "a communal effort to build up the Kingdom of God on Earth by developing a community for the adherents to occupy." It also found that donating lands, labor, and other personal property to the use of the UEP is one important way in which members of the Church express their commitment to the religious principle of the United Order. The trial court further found that an essential element of the United Order principle is management by religious authority. Land management decisions must be made by the religious leadership of the Church, because religious management of the consecrated lands of the United Order is a fundamental

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[9] *See, e.g., Bates v. Cekada*, 130 F.R.D. 52, 55 (E.D. Va. 1990) (use of "equitable powers to order an accounting of property and to impose a constructive trust" on disputed church property is adjudication on the basis of neutral principles); *Bjorkman v. Protestant Episcopal Church*, 759 S.W.2d 583, 587 (Ky. 1988) (assuming that equitable remedy of constructive trust may be imposed on disputed church property as adjudication under neutral principles). *See generally Paradise Hills Church, Inc. v. International Church of the Foursquare Gospel*, 467 F. Supp. 357, 362 (D. Ariz. 1979):

> The formal title doctrine appears to be the only recognized example of a neutral principle. It involves simply identifying the title holder of the property. . . . A more liberal interpretation of neutral principles permits civil courts to examine not only deeds, but also reverter clauses and state corporation laws. Presumably this view permits civil courts to examine articles of incorporation and bylaws of a hierarchical church as well.

precept of the United Order. The consecration of these donations to the religious purposes of the Church is a holy act and a visible and collective expression of religious purpose.

The trial court's decision effectively erases the religious principle of the United Order from the doctrinal structure of the Church for the purposes of constitutional review. Similarly, the court ignored the obvious sacerdotal dimension of the word "consecration" in order to avoid recognizing the religious reach of the issues presented in this case.

In affirming the trial court, the Utah Supreme Court reasoned that the constitutional prohibition on judicial interpretation of religious doctrine has "no application to this case because no question of church doctrine is central to this case." In essence, that court held that "neutral principles" analysis allows or even requires the court to blind itself to all evidence of religion in resolving the dispute. On this basis, the court has permitted the trial court to adjust the equities between religiously motivated actors based upon that court's assessment of the fairness of the situation and the adequacy of sermons from the pulpit in explaining the situation to adherents of the faith. By interpreting some FLDS beliefs and practices and ignoring others, the trial court and the Utah Supreme Court violate both the constitutional prohibition on judicial interpretation of religious doctrine and the mandate that church property disputes be decided only according to neutral principles of secular law.

Ignoring the religious dimension of church property disputes in order to fit within the neutral principles doctrine of *Jones* is self-defeating. Such ignorance inevitably ends in the entanglement of the court in ecclesiastical matters, often to the same extent as explicit judicial interpretation of religious doctrine in violation of the prohibition on such interpretation.

In this case, the trial court's determination that unjust enrichment is a "neutral principle" by which it could resolve the dispute between dissidents and the FLDS Church has effectively substituted the trial court for FLDS leaders as the manager of the UEP trust. Because the life estates awarded by the trial court to each dissident are so closely tied to the particular facts and personal circumstances of each dissident, each time that a new question arises during the life of any dissident regarding the nature and extent of his occupancy rights on UEP lands, the parties have been required to request guidance from the trial court. For example, under the trial court's order, the dissidents have no legal obligation to obey orders of the FLDS leaders who are the trustees of the UEP. Thus, the court has had to enter detailed orders concerning assessment, collection, and payment of property taxes , construction of improvements, and other issues relating to the life estates granted the dissidents under the court's ruling. FLDS doctrine assigns those decisions to the Bishop, to be made based upon the "just wants and needs" of the church membership.

The trial court's *de facto* management of the UEP trust, and the degree to which it has intruded upon the religious beliefs and practices of the Church, became evident in a particularly dramatic way in an incident that arose immediately after the court issued its unjust enrichment ruling. Plaintiff Claude Cooke moved out of his home, turning its use over to four unsupervised teenage girls. These children used the home as their personal party house, allowing young adults and teenagers to assemble in the home without adult supervision to smoke, consume alcohol, and engage in other behavior that violates the religious beliefs of the FLDS church and is deeply offensive to its members.

Because the trial court's order divested the FLDS leaders who manage the UEP of control over portions of UEP property occupied by dissidents, the leaders were forced to move the trial court to put an end to the offensive behavior. Although the behavior and its offensive nature were undisputed, the trial court declined to intervene, commenting that the behavior found to be so offensive to the members of the FLDS Church was not particularly offensive to the court or to the public generally, and determining that property occupied by dissidents was subject only to public standards of behavior to be determined by the court, and not by the religious beliefs and practices of the Church.

B. *Courts Are Never Justified in Interpreting Religious Doctrine, and Courts Properly Decide Church Property Disputes by Ignoring the Religious Beliefs and Practices That Inform Equitable Remedies Only in Case of Fraud or Misrepresentation by Church Leaders.*

This Court has suggested that the potential injustice of the prohibition on interpretation of religious doctrine can be tempered by treating situations involving fraud by church leaders with a less stringent rule. *See, e.g., Gonzalez v. Archbishop*, 280 U.S. 1, 16 (1929) (per Brandeis, J.) ("*In the absence of fraud, collusion, or arbitrariness*, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive. . . .") (dictum) (emphasis added).[10] No fraud or collusion was present in this

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[10] The Court has never ruled on the constitutionality of the so-called "marginal review" of fraud or collusion suggested by *Gonzalez*, *see, e.g., Serbian Eastern Orthodox*, 426 U.S. at 712; *Hull Church*, 393 U.S. at 450-51 & n.7, but it has held that courts may not review church decisions for arbitrariness,

case, however. The trial court found that the UEP had complied with all objective legal standards—that is, that there had been no fraud, overreaching, breach of fiduciary duty, breach of contract, or waiver, and that each of the plaintiffs knew or had access to information concerning the terms of his or her use of the property.

The Utah Supreme Court, by contrast, held that even assuming that petitioners' free exercise rights were burdened by the trial court's awarding the dissidents life estates in UEP property, this burden was justified by the state's "'paramount' interest . . . 'of the highest order'" in providing "that all parties are able to resolve legal disputes before a neutral tribunal." 351 Utah Adv. Rep. at 9 (quoting *Sherbert v. Verner*, 374 U.S. 398, 407 (1963)). Although this Court has recognized that states have a legitimate interest in providing a forum for adjudication of disputes among its citizens, it has cautioned that this interest cannot under any circumstances justify judicial interpretation of religious doctrine. *E.g., Jones*, 443 U.S. at 602. Indeed, since the state's interest in providing a forum for resolution of disputes is present in every church property dispute that proceeds to litigation, allowing this interest to override any intrusion on church autonomy would obliterate the protection of religious free exercise so carefully calibrated by this Court in its church property decisions.[11]

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see Serbian Eastern Orthodox, 426 U.S. at 713-16.

[11] *See, e.g., Jones*, 443 U.S. at 602 ("[T]he First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice."); *Serbian Eastern Orthodox*, 426 U.S. at 709 ("Even when rival church factions seek resolution of a church property dispute in the civil courts there is substantial danger that the State will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrinal beliefs."); *id.* at 733 (Rehnquist, J., joined by

Contrary to the Utah Supreme Court's holding, no particularly important or overriding state interest was presented in this case. The state's interest in monitoring the fairness of a religious program is far from overwhelming;[12] indeed, "fairness" of a religious practice is not a legitimate subject of judicial inquiry.

II. A JUDICIAL DETERMINATION THAT A LAW IS RELIGIOUSLY NEUTRAL AND GENERALLY APPLICABLE DOES NOT BY ITSELF MEAN THAT SUCH LAW IS A "NEUTRAL PRINCIPLE" WHICH MAY BE CONSTITUTIONALLY APPLIED TO RESOLVE A CHURCH PROPERTY DISPUTE.

A. *Even If a Law Is Religiously Neutral and Generally Applicable under this Court's Free Exercise Jurisprudence, a Court May Not Apply Such a Law Against Religious Individuals or Institutions If Doing So Requires the Court to Interpret Religious Doctrine.*

This Court has not decided a church property case since *Jones v. Wolf*, 443 U.S. 595 (1979), nearly twenty years ago.

Stevens, J., dissenting) ("The [constitutional] rule . . . which seems fairly implicit in the history of our First Amendment, is that the government may not displace the free religious choices of its citizens by placing its weight behind a particular religious belief, tenet, or sect."); *Hull Church*, 393 U.S. at 446 (quoting *Watson v. Jones*, 80 U.S. (13 Wall.) 666, 728-29 (1872) (emphasis added)) ("'It is of the essence of [voluntary] religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for.'").

[12] To the contrary, state government was established in Utah above all to protect and preserve inherent and inalienable rights including the rights of religious liberty. Utah Const., art. I, sec. 1, 26, and 27.

The jurisprudential landscape of the religion clauses has changed considerably since *Jones* was decided. This Court has since held that believers are not entitled to exemptions under the free exercise clause when their religious practices are incidentally burdened by religiously neutral, generally applicable laws. *Employment Division v. Smith*, 494 U.S. 872 (1990); *see also City of Boerne v. Flores*, 117 S.Ct. 2157, 2160-61 (1997); *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993). This Court has also observed in dicta that a legislature might choose to exempt believers from the obligation to comply with neutral and general laws that burden their religious practices, but is not constitutionally required to do so. *Smith*, 494 U.S. at 890.

Smith and *Lukumi* have placed in question the scope and continued validity of the longstanding constitutional prohibition on judicial interpretation of religious doctrine. In their wake, courts have assumed that once a law is determined to be religiously neutral and generally applicable, they may automatically apply the law to resolve a church property or other dispute among members of a religious congregation as a neutral principle of law under *Jones*.[13]

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[13] *See, e.g.*, *United States v. Hsia*, 24 F. Supp. 2d 33, 45-46 (D.D.C. 1998) (in response to claim that government violated defendant's free exercise rights by indicting her based on a misinterpretation of Buddhist beliefs and practices, government asserted that *Smith* "alters the analysis of [defendant]'s claim because the Supreme Court in *Smith* held that in most circumstances, the right of free exercise is not a defense against the application of an otherwise valid and neutral law of general applicability"); *Sanders v. Baucum*, 929 F. Supp. 1028, 1034 (N.D. Tex. 1996) (holding that laws found to be religiously neutral and generally applicable within the meaning of *Smith* and *Lukumi* "can be applied to resolve even internal disputes within a church without offending the First Amendment"); *Smith v. O'Connell*, 986 F. Supp. 73, 79-80 (D.R.I. 1997) (implicitly equating "neutral laws of general application" with the "neutral-principles approach"

B. *"Neutral Principles" in* Jones *Is Not Synonymous with "Religiously Neutral, Generally Applicable" Law in* Smith.

Contrary to the assumptions of these courts, "religiously neutral, generally applicable" law in *Smith* and *Lukumi* is not synonymous with "neutral principles" in *Jones*. *Smith* and *Lukumi* make clear this Court's understanding that a neutral law is one that does not target religion or religious practice, *Lakumi,* 508 U.S. at 543; *Smith*, 494 U.S. at 878, and a general law is one that applies "across the board," *id.* at 884, not being so riddled with exceptions that they swallow the rule, *Lukumi*, 508 U.S. at 543. Adjudication by "neutral principles of law," by contrast, means that the court is able fairly to adjudicate a church property dispute without interpreting or otherwise ruling on religious doctrine. *Jones*, 443 U.S. at 603-04. It is not the case that a neutral and general law always supplies the basis for adjudication of a dispute on the basis of neutral principles; equitable principles, for

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of *Jones*); *Morris v. Midway Southern Bapt. Ch.*, 203 B.R. 468, 475 (Bankr. D. Kan. 1996) (finding that statute providing for avoidance of debtor preferences is "a valid and neutral law of general application" whose application to debtor tithes thus rests on "neutral principles of law" which did not entangle the court in religious questions). *Prince v. Firman*, 584 A.2d 8, 12-13 (D.C. App. 1990) (holding that because the statute at issue is constitutional under *Smith*, its enforcement against a religious defendant does not "impermissibly entangle the court in matters of religious governance," and requires only that it "apply a neutral property rule" that does not involve interpretation of doctrine."). *See generally EEOC v. Catholic Univ. of Am.*, 83 F.2d 455, 351 (D.C. Cir. 1996):

> We acknowledge that *Kedroff* and the other Supreme Court cases that we and other courts have cited in support of the ministerial exemption [from Title VII] did not involve neutral statutes of general application. Nevertheless, we cannot believe that the Supreme Court in *Smith* intended to qualify this century-old affirmation of a church's sovereignty over its own affairs.

example, are religiously neutral and may often be generally applicable, yet, as petitioners have explained, this Court has never held that they are neutral principles within the meaning of *Jones*.

III. THE ESTABLISHMENT CLAUSE MANDATES THAT COURTS REFRAIN FROM APPLYING RELIGIOUSLY NEUTRAL, GENERALLY APPLICABLE LAWS TO RESOLVE CHURCH PROPERTY DISPUTES WHEN REFRAINING WILL REDUCE OR ELIMINATE EXCESSIVE CHURCH-STATE ENTANGLEMENTS THAT INHIBIT RELIGOIUS BELIEF OR PRACTICE.

A. *Government Actions Taken to Reduce Excessive Entanglements Between Church and State Do Not Have the Primary Effect of Advancing Religion Even When Such Actions Relieve Religious Organizations from the Obligation of Complying with a Neutral and General Law.*

This Court held in *Walz v. Tax Commission*, 397 U.S. 664 (1970), that property tax exemptions for churches and other religious institutions do not violate the establishment clause. After determining that religious property tax exemptions are not aimed at "establishing, sponsoring, or supporting religion," *id.* at 672-74, this Court inquired whether such exemptions create an "excessive government entanglement with religion" and held that they do not, reasoning that exemption of church property from taxes gives rise to less involvement of church and state than would taxation, by elminating "tax valuation of church property, tax liens, tax foreclosures, and the direct confrontations and conflicts that follow in the train of those legal processes." 397 U.S. at 674. By holding that property tax exemptions do not violate the establishment

clause, this Court determined that such exemptions are constitutionally permissible because they do not advance religion; it did not hold that such exemptions are constitutionally required, although it suggested in dicta that there might be circumstances in which the "excessive entanglement" analysis would require exemption.[14]

B. *Government Is Constitutionally Required Not to Apply Neutral and General Remedies to Religious Organizations When Application of Such Remedies to Such Organizations Would Be an Excessive Entanglement of Church and State Having the Primary Effect of Inhibiting Religious Belief and Practice.*

This Court held in *Agostini v. Felton*, 521 U.S. __, 117 S.Ct. 1997 (1997), that nonpervasive monitoring designed to verify that public school teachers present on religious school campuses do not teach religion does not constitute an excessive entanglement of the state with religion. *Id.* at 2016. *Agostini* concluded that entanglement should not be viewed as an independent test of constitutionality under the establishment clause, but as an aspect of the inquiry into a law's effect. *Id.* at 2015.

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[14] *See* 397 U.S. at 674 (emphasis added):

> We find it unnecessary to justify the tax exemption on the social welfare services or "good works" that some churches perform for parishioners and others .... To give emphasis to so variable an aspect of the work of religious bodies would introduce an element of governmental evaluation and standards as to the worth of particular social welfare programs, thus producing a kind of continuing day-to-day relationship which the policy of neutrality seeks to minimize. Hence, *the use of a social welfare yardstick as a significant element to qualify for tax exemption could conceivably rise to confrontations that could escalate to constitutional dimensions.*

Walz already stands for the proposition that exemption of a religious institution from the burdens of a neutral and general law does not advance religion and is thus constitutionally permissible under the establishment clause when exemption avoids an excessive entanglement. 397 U.S. at 674; *see also Agostini*, 117 S.Ct. at 2015 (characterizing the use of entanglement analysis in *Walz* as having determined "whether an aid program has an impermissible effect of advancing religion"). *Agostini* also concluded, however, that exemption of a religious institution from the burdens of a law may be constitutionally required under the establishment clause when the law inhibits religion and thus excessively entangles church and state:

> [I]n *Lemon* itself, the entanglement that the Court found 'independently' to necessitate the program's invalidation also was found to have the effect of inhibiting religion. Thus, it is simplest to recognize why entanglement is significant and treat it—as we did in *Walz*—as an aspect of the inquiry into a statute's effect

Id.(citation omitted) (citing *Lemon*, 403 U.S. at 620 ("[W]e cannot ignore here the danger that pervasive modern governmental power will ultimately intrude on religion . . . .")).

The use of entanglement to mandate exemption of religious institutions from laws that inhibit religion, expressly approved by *Agostini*, directly contradicts the teaching of *Smith* that believers are not to be excused from complying with neutral and general laws that incidentally burden their religioius beliefs or practices.

C. *A Court Cannot Resolve an Action Against a Church or its Leaders for Mismanagement Without Becoming Entangled in Interpretation of Religious Doctrine.*

An action against the trustees of a trust for breach of fiduciary duty or other mismanagement requires that a court establish the nature and scope of the fiduciaries' responsibilities to the beneficiaries of the trust, and that the finder of fact then determine whether and to what extent the fiduciaries deviated from these responsibilities. The "nature and extent" of the trustees' duties are determined by the "terms of the trust." *See, e.g.*, RESTATEMENT (SECOND) OF TRUSTS § 164, at 341 (1959). The terms of the trust, in turn, mean "the manifestation of intention of the settlor" regarding the purpose of the trust "at the time of the creation of the trust." *Id.*, § 4 & comm. *a*, at 13; *id.*, § 164, comm. on cl. (a), ¶¶ *a* & *b*, at 341. The determination of this intention involves

> a construction of the [trust] instrument, where construction is necessary, in the light of the surrounding circumstances at the time of the execution of the instrument. The court places itself in the position of the trustor at the time of the creation of the trust, and interprets what [the trustor] has said or done in the light of his environment at that time.

Olivas v. Board of Nat'l Missions of the Presbyterian Church USA, 1 Ariz. App. 543, 547, 405 P.2d 481, 485 (1965).

In the context of a dispute involving the administration of church property previously entrusted to church leaders by the discharge of a religious duty, the nature and scope of the leaders' responsibilities with respect to the property is directly and unavoidably derived from the religious beliefs and practices that gave rise to the trust in the first place. Thus,

whether or not FLDS Church leaders have breached their fiduciary duty in administering property entrusted to them out of religious obligation can only be determined by evaluating their conduct against the religious beliefs and practices that create and define their responsbilities towards the property. If these beliefs and practices are ignored by the court in deference to the prohibition on judicial intepretation of religious doctrine, the court ends up enforcing a secular duty that bears little resemblance to the religiously charged relationship that gave rise to the trust in the first place.[15]

This conundrum is the unavoidable consequence of the Utah Supreme Court's holding that the UEP is a private rather than a charitable trust. This determination, however, did not disturb the trial court's specific factual finding that the UEP is a religious organization formed with the purpose of advancing the members of the Church "toward the United Order," and constituting "a communal effort to build up the Kingdom of God on Earth by developing a community for the adherents to occupy."[16] The trial court further found

> "that the creators of the [UEP] trust were motivated by their religious beliefs to create a trust to hold title to

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[15] *Cf., Serbian Eastern Orthodox Diocese Church v. Milivojevich*, 426 U.S. 696, 714-15 (1976):

> [I]t is the essence of religious faith that ecclesiastical decisions are reached and are to be accepted as matters of faith whether or not rational or measurable by objective criteria. Constitutional concepts of due process, involving secular notions of "fundamental fairness" or impermissible objectives, are therefore hardly relevant to such matters of ecclesiastical cognizance.

[16] The Utah Supreme Court held that the UEP did not qualify as a charitable trust because the initial settlors were identified in the trust document as beneficiaries when the trust was formed in 1942.

> property donated by adherents to their religious faith, including themselves, and to engage in business enterprises for the benefit of the followers of the Work."

351 Utah Adv. Rep. at 10 (quoting trial court decision). The trial court also found that the UEP was a religious institution and that management of the trust by religious leaders was an important component of religious practice:

> The Work's leaders often preached that the purpose of the UEP was to advance the group toward the United Order, which was a an economic concept taught in the scriptures held sacred by The Work. To accomplish this goal the UEP was intended to provide a means for all real property of the religious group to be held in common and for its use to be managed by a benevolent and inspired group of God fearing leaders.

By holding that the UEP is a private trust, notwithstanding the UEP's obvious, explicit, and undeniable religious mission, the Utah court consciously conferred standing on dissenting members to assert claims for mismangagment of trust assets against the FLDS Church leaders who serve as trustees, including actions for breach of fiduciary duty, an accounting, and improper distribution of trust assets. *See* 351 Utah Adv. Rep. at 10 ("[t]he claimants make this assertion [that the UEP is a private trust] because the trial court's conclusion that the UEP trust is charitable denied claimants standing to assert their breach of fiduciary duty, accounting, and distribution claims.") (citing RESTATEMENT OF RESTITUTION § 391). Adjudication of these claims will necessarily require judicial inquiry into the merits of the Church's religious beliefs and practices; because FLDS Church leaders administered the UEP according to the church's religious beliefs and practices, claims that they violated their respec-

tive fiduciary duties with respect to any particular disposition of UEP property will necessarily require that a court evaluate the reasonableness, fairness, or other merit of the religious beliefs and practices of the Church that will inevitably be offered in justification of the disposition.

CONCLUSION

For the foregoing reasons, petitioners respectfully request that this Court issue a writ of certiorari to the Utah Supreme Court to consider the questions raised in this petition.

Respectfully submitted,

RODNEY R. PARKER
SNOW, CHRISTENSEN & MARTINEAU
10 Exchange Place, 11th Floor
Salt Lake City, Utah 84111
(801) 521-9000

Attorneys for Petitioners

February 16, 1999

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APPENDICES

APPENDIX A

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT IN AND FOR WASHINGTON COUNTY, STATE OF UTAH

RULON T. JEFFS, trustee for the United Effort Plan, a Utah trust, and KENNETH STEED, Plaintiffs,
vs.
CORA FISCHER STUBBS and DAVID L. STUBBS, Defendants.

MEMORANDUM DECISION AND ORDER

CASE NOS. 89-2850
930500305 QT

These consolidated cases came before the Court for trial on the following dates: November 30, 1994; December 1, 2, 5, 6, 8, 12, 13, 14, 19, 20, 21, 22, 23, 1994; May 17, 18, 19, 24, 25, and 26, 1995. The parties were represented by their respective counsel of record, Reid W. Lambert representing the 21 plaintiffs in the Amended Complaint filed February 16, 1994, (Plaintiff Boyd Dockstader having been dismissed by stipulation and with prejudice prior to the commencement of the trial) and the defendants in the two consolidated cases (hereinafter referred to collectively as the claimants); Raymond Scott Berry representing the United Effort Plan Trust; and Reed L. Martineau and Rodney R. Parker representing Rulon T. Jeffs, Fred M. Jessop, LeRoy S. Jeffs, Parley J. Harker, James K. Zitting, Winston K. Blackmore, and Truman I. Barlow, Trustees of the UEP Trust. The presentation of evidence was concluded on May 26, 1995, and the parties sought, and were given, time to submit

memoranda prior to closing argument. The parties submitted their memoranda and the matter came before the Court on November 13, 1995, for closing argument. The Court took the matter under submission and now enters the following memorandum decision and order.

GENERAL FINDINGS OF FACT

This case presents complex issues of fact and law. The Court has heard dozens of witnesses and has received over 100 exhibits. After a thorough review of the evidence the Court finds the following facts have been established.

Plaintiffs and defendants herein generally all contend that in approximately 1836, John Taylor, then President of the Church of Jesus Christ of Latter-Day Saints, directed several of his followers to continue the practice of polygamy outside that Church. The movement that resulted has been called The Priesthood Work (hereinafter The Work), and the adherents to that movement have continued the practice of plural marriage within their own religious organization to the present day.

As may be expected, the adherents to The Work claim to have suffered legal prosecution and illegal persecution because of their beliefs over many years. Sometime in the early part of this century the leadership of The Work determined to locate its membership in an isolated area where they could practice their religion without interference from those outside their faith. The Work's leaders taught, and the adherents believed, that the chosen area would become holy ground intended for the use and protection of the faithful. There was even a widely publicized report of a vision received by Joseph Musser in which he was told by God that

the unfaithful residents would become discouraged and leave, implying that only the faithful would reside in the community.

At some point, probably in the 1930's, the area now known as Short Creek, composed of Hildale, Utah and Colorado City, Arizona, was selected for that purpose. Those in charge of The Work set out to obtain land for the development of a city for the adherents to their faith to occupy.

The Work was directed by a group of religious leaders called the Priesthood Council during most of the history relevant to this case. The number of members of that Council varied from time to time. Under the direction of the Council a large tract of land was secured and those faithful to The Work began to migrate to the area to settle.

A common way for The Work to obtain land to occupy was to have its followers and sympathizers buy land and then deed it to The Work. To hold title to the land as it began to accumulate, the leadership of The Work formed a trust which was the predecessor to the current United Effort Plan Trust. The predecessor trust eventually failed and the land was deeded back those who had contributed it, for the most part. Finally, in 1942, the 5 members of the then existing Priesthood Council signed, and later caused to be recorded in Mohave County, Arizona, a Declaration of Trust of the United Effort Plan, the trust in question in this law suit (hereinafter UEP).

After the UEP was formed, most of the land held by the predecessor trust was deeded to the UEP. As other land was made available by the adherents to The Work, it was also

deeded to the UEP. The UEP currently holds legal title to much of the land around the Short Creek area, including the lands occupied by the claimants in these cases. Taxes on the UEP held land are paid by assessment of the persons occupying the land and other faithful members of The Work, if necessary. Tax money would be solicited as a donation and collected by religious leaders. No penalty was imposed on the land users who could not pay the taxes assessed to them. The shortfall would be made up by The Work, even using other donation money if necessary. The plaintiffs herein participated in this tax arrangement to one degree or, another.

In the early days of the UEP, it also owned various cooperative enterprises in the community and engaged in business activities which were formed to serve the adherents of The Work living in the remote area, such as stores, a gas station, dairy and other operations. In the 1940's many of these enterprises failed and the trust closed its accounts and determined that it would limit its functions to holding title to the land in the area. Such has been the case since the 1940's.

Also in the early days of the UEP there was an effort by the religious leaders to provide food and other necessities to the faithful. In 1953 The Work's policy in that area changed and the adherents were encouraged to be independent and to "begin paddling their own canoes" to quote Fred Jessop. From the beginning of the operation of the UEP, it was apparently the practice of the trustees, who were also the religious leaders of The Work, to invite certain of the adherents to build their homes on the land owned by the UEP. The adherents were aware that they were building on land to which they did not hold title. No deeds were issued and no written agreements were formalized spelling out the

terms for the use of the land. The use of the land was conditioned upon religious teachings and beliefs commonly held and widely known in the community.

The Work's leaders often preached that the purpose of the UEP was to advance the group toward the United Order, which was a an economic concept taught in the scriptures held sacred by The Work. To accomplish this goal the UEP was intended to provide a means for all real property of the religious group to be held in common and for its use to be managed by a benevolent and inspired group of God fearing leaders. Accordingly, it was not unusual for those occupying UEP lands or houses to be asked to move so those more needy or more deserving in the eyes of the trustees, or their agents, could take over the premises. Generally such requests were complied with willingly by the adherents to The Work. Some adherents of The Work built homes only to see the UEP move another family into the partially or fully completed structure. These occurrences were common knowledge in the community.

Another purpose of the UEP, as taught by leaders of The Work, was to protect the adherents from legal suits by enemies of The Work. The adherents were told that having a home on UEP land was better than having a deed because it couldn't be foreclosed for the adherent's debt. For the same reason, the adherents were frequently told that they were not free to mortgage or sell the land they occupied and that if they ever determined to leave the land, for any reason, the land and all improvements would belong to the UEP.

The leadership of the Work also taught that the UEP constituted a communal effort to build up the Kingdom of God on Earth by developing a community for the adherents

to occupy. As a result, many of the adherents, as part of their religious practice, spent countless hours on volunteer projects for the community, such as setting up water and sewer systems. They often went on work missions in which they would work without compensation for the community, or they would take jobs outside the community and contribute their pay to their religious leaders. It was also common among the adherents of The Work to serve as volunteers doing construction work on the homes of the other adherents. Some were compensated for those efforts, either with money or by trade, but many were not compensated.

Some residents did become discouraged and leave the community, as life there could be hard and lonely, and their improvements became the property of the UEP. Some were invited to leave by the leaders and some of these left voluntarily while others were bought out, "prayed out" or allowed to remain. Until recent times, the trust had not resorted to legal action or force to require occupants of the land to vacate.

Most of the communications to the residents from the UEP, or the Priesthood Council about the UEP, came from the pulpit during the frequent religious services that the adherents attended. In addition, some of the claimants in this suit claim that they had private conversations with representatives of the UEP in which they received additional representations about their right to use the UEP land. These communications will be discussed later in this opinion. All of the claimants have built improvements upon land to which title is held by the UEP.

Although the verbal arrangements for the use of UEP land were usually made with members of the religious

leadership, who were also UEP trustees, or their agents such as J. Marion Hammon or Edson Jessop, the evidence clearly indicates that the provisions of the UEP Declaration and the amendments thereto were roundly ignored by everyone in the process.

A copy of the Declaration and amendments is appended hereto and incorporated by this reference as Exhibit A. The Declaration is clear in some particulars and ambiguous in others. Having heard the evidence presented by the parties as to the intention of the subscribers or settlers, the Court is now prepared to assign meaning to the Declaration provisions. *(See* 76 Am. Jur. 2d *Trusts,* Sec. 35, p. 62.)

The structure of the UEP is somewhat unusual. It has subscribers who created the trust who are also the initial members and the trustees of the trust and some of its potential beneficiaries. In addition there is provision for others to become "members" of the trust (See Article XII) and also for others to become potential beneficiaries (See 1946 Amendment and Article XII, paragraph 3). Under the terms of the declaration the distribution of benefits from the trust is entirely discretionary with the Board of Trustees who are to administer equitable and beneficial interests from the trust according to the "just wants and needs" of the members and beneficiaries and in accord with the trust's ability to respond to those wants and needs. (See Declaration, page 1, 2nd paragraph.)

The Declaration clearly provides that the trust is to take action only through the trustees acting together (See Articles II and III) except for the specific duties delegated to the President (See 1946 Amendment). The trustees and their successors were to hold title to all property in the trust estate

and to exercise exclusive management over it under the terms of the trust. (See Article V.) The Board of Trustees was to select additional trustees and could increase or diminish the number of trustees. (See Article VII.)

In the declaration the trust is specifically designated as a charitable and philanthropic trust to be operated in the spirit of brotherhood, and is empowered to engage in legitimate business enterprises to further its objectives. (See Article VIII.) The declaration designates no specific beneficiaries, but only shifting, potential beneficiaries, whose identity is to be determined in the future, depending upon the discretionary decisions of the trustees. The members of the trust have no entitlement to benefits since the trustees have discretion to distribute benefits to members or non-members alike as the trustees see fit. The Court finds that the trust is a classic charitable trust established with the intention to serve those in need of help through charitable and philanthropic activities, regardless of whether they are members of the trust or not. Additional members may be added to the UEP by it consecration of such property, real, personal or mixed, to the trust in such amounts as shall be deemed sufficient by the Board of Trustees... " and members can be expelled by vote of the Trustees. (See Article XII, last paragraph). The members buy nothing by their contributions to the corpus of the trust, as the members and other potential beneficiaries have no right to claim any benefit unless the trustees declare it (See Articles XIV and XV). Those seeking benefits from the trust do so as suppliants, not as a matter of right. The Trust is to terminate no later than 100 years from 1946 and the corpus, if any, distributed to the then current membership. The UEP was declared a non-profit organization in the 1946 Amendment to the declaration.

The plaintiffs in this case have argued that the trust was actually a common law business trust or a Massachusetts business trust. The Court is persuaded that the trust was intended as a charitable trust, even though there is evidence to the contrary and even though the trust itself has demonstrated confusion on this point by variously referring to itself as a common law trust and a charitable trust over its history. Plaintiffs make the following points in support of their view:

1. The Declaration authorizes the trust to engage in business; 2. the members are entitled to equitable and beneficial interests in the profits and property of the trust; 3. the liability of the members is limited, implying some entitlement; 4. there is reference to membership certificates; 5. the trust is to endure "for such time as the business proves to be advantageous"; and 6. the trust states that its creators meant to create a trust, not a partnership.

The Court finds as follows regarding the factual assertions contained in those points: 1. This statement is true. 2. This statement is incorrect. The members' interests in the trust are subject to the discretion of the trustees who are to distribute benefits based on the just wants and needs of the beneficiaries and members (See 2nd paragraph of the first page of the Declaration, Article XIV, and the 1946 Amendment). 3. The first part of the statement is true, the implication stated is not. 4. This is true. 5. The original declaration contains that language but it was amended out in 1946. 6. This statement is true.

The mere mention of matters normally related to a business enterprise is not the determining factor in deciding the nature of the trust. The Court is aware of no legal

authority prohibiting a charitable trust from engaging in the activities set out above. The primary focus of the inquiry must be to ascertain the intent of the settlers and to give full effect to that intent, so long as it is not contrary to law or public policy. (*See* 76 Am. Jur. 2d, Section 35, p. 62) The Court has found, based on the evidence presented at trial and the clear language of the unambiguous portions of the declaration, that the creators of the trust were motivated by their religious beliefs to create a trust to hold title to the property donated by adherents to their religious faith, including themselves, and to engage in business enterprises for the benefit of the followers of The Work. The property was intended to be used to benefit those that the trustees chose as beneficiaries in the future according to the "just wants and needs" of the beneficiaries at the time benefits were being considered. At the time the trust was created, and at all times thereafter, the identity of the beneficiaries was unknown until the trustees designated beneficiaries. The trustees were free to confer benefits upon trust members and non-members alike and to do so only restricted by consideration of whether the wants and needs of the beneficiary were just in the view of the trustees. In the process the trustees were free to distribute all the holdings of the trust. In the event that they chose to do so, there would be nothing to be divided among the trust members at the time the trust terminated.

Although the declaration provides for the business of the trust to be conducted by the trustees as a group, the evidence shows that the presiding religious officer of The Work was allowed to make the decisions for the trust, often without consulting with the other trustees. The trust kept few records. Membership lists were not maintained. Certificates of membership where issued rarely and sporadically. The

trustees did not meet to create new members or to determine who should become beneficiaries of the trust. The UEP was often referred to in religious discussion but the formalities of the administration of the trust were ignored, as was the actual language of the trust. In fact many within The Work felt it would be an indication of a lack of faith if the declaration of trust were to be obtained and examined.

The claimants all claim to be members of the UEP. The Court finds that the evidence does not support that position. No evidence was introduced by any claimant to show that he was made a member of the UEP by vote of the Board of Trustees after they had determined that a sufficient consecration had been made. The parties generally assumed that they were members of the UEP automatically because they were adherents to The Work, or because they were allowed to live on UEP land, or because someone told them they were a member, or for some other reason. No action by the Board of Trustees was demonstrated granting membership to any of the claimants in this case. The Court finds that none of the claimants are members of the UEP. However, that does not mean that they are not beneficiaries of the UEP since all are receiving the benefit of being allowed to use and occupy UEP land. The terms "member" and "beneficiary" are not interchangeable in the UEP Declaration. Each claimant has constructed substantial improvements on UEP land since being allowed to enter into possession and use of the property.

In approximately the late 1960's or early 1970's there arose some dissention among the adherents to The Work. The priesthood council then in place was apparently split by a doctrinal question. The situation festered until the death of President Leroy S. Johnson. At that time the dispute

surfaced and in approximately 1984 the adherents to The Work split into two camps. One, under the direction of President Rulon T. Jeffs, holds control of the UEP and has since formalized and organized the Fundamentalist Church of Jesus Christ of Latter-Day Saints (hereinafter referred to as the First Ward). The other, initially under the direction of J. Marion Hammon and Alma Timpson, is the camp to which the claimants belong, for the most part, although some claimants now assert no affiliation with either group. (Hereinafter referred to as the Second Ward.)

Pres. Jeffs has appointed trustees for the UEP who are not members of the Priesthood Council. He has declared all those occupying UEP lands to be tenants at will. He has declared the claimants herein are apostates and has disassociated them from the religious organization which he heads. The 2nd Ward claims they are the true adherents to The Work. The Court has repeated held that it has no jurisdiction to resolve such a dispute.

In 1987 the claimants herein brought suit in the Federal Court to determine the rights, if any, that they may have in the UEP land which they have occupied. This action was commenced after the claimants received notification that they were considered to be tenants at will by the UEP. In 1989 suit was also filed in Washington County, Utah raising many of the same issues. The State case was stayed pending the resolution of the Federal case. Eventually the Federal case was dismissed for lack of subject matter jurisdiction. The stay on the State action was then lifted and this matter has proceeded in this forum. During the pendency of this original case, the UEP brought suits against the defendants Stubbs and Harker seeking relief under the unlawful detainer statutes of the State.

LEGAL ANALYSIS

For trial, the Court ordered bifurcation of the issues in the consolidated cases. The issues tried to date are those raised in the first six claims for relief in the Amended Complaint filed February 16, 1994, by 22 plaintiffs. By the time of trial Boyd Dockstader had been dismissed with prejudice as a plaintiff, leaving 21 with claims pending. The six causes of action tried are 1. Breach of Contract; 2. Implied Contract; 3. Negligent Misrepresentation; 4. Constructive Fraud; 5. Estoppel; and 6. Unjust Enrichment/Occupying Claimants. The elements of these claims are as follows:

Express Contract

To establish the existence of an enforceable express contract, there must be proven, by a preponderance of the evidence, an offer with present contractual intent or mutual assent, and acceptance of that offer by the other party, supported by consideration. In this case the claimants assert, among other things, that they were promised an interest in real property belonging to the UEP, which raises issues of the Statute of Frauds. The law is clear in Utah that part performance of an oral agreement will satisfy the Statute of Frauds, but only if the existence of an oral contract and its terms are clear and definite, the acts done in performance are clear and definite and those acts are in reliance upon and strictly referable to the contract and not readily explainable on any other ground. [*See Martin v. Scholl*, 678 P.2d 274 (1983).]

Implied Contract

An implied contract is based upon the same elements as an express oral contract, except that the contract and its terms are inferred from conduct, rather that expressed in words. The burden of proof is the same.

Negligent Misrepresentation

The elements of this cause of action have varying formulations which seem to contain the same legal principles. One such is, a "party injured by reasonable reliance upon a second party's careless or negligent misrepresentation of a material fact may recover damages resulting from that injury when the second party had a pecuniary interest in the transaction, was in a superior position to know the material facts, and should have reasonably foreseen that the injured party was likely to rely upon the fact". [*See Price-Orem Investment Company v. Rollins, et. al.*, 713 P.2d 55 (1986) and *Maack v. Resource Design & Const.,Inc.*, 875 P.2d 570 (1994).]

Another definition, cited by the plaintiffs herein, is, "one who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by the justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information." [*See Atkinson v. IHC Hospitals, Inc.*, 798 P.2d 733 (1990)]

The elements of this claim must be proven by clear and convincing evidence. [*See Pace v. Parrish*, 247 P.2d 273

(1952); and *Jardine v. Brunswick Corp.*, 423 P.2d 659 (1967)].

Constructive Fraud

A claim for constructive fraud arises out of a confidential relationship between the parties such that one party, having gained the trust and confidence of the other, exercises extraordinary influence over the other and in so doing fails to make full and truthful disclosure of all material facts in connection with any transaction in which the other party could be expected to rely upon the information provided with resulting injury to the other party from the transaction.

The existence of a confidential relationship must be proven by clear and convincing evidence. [*See Bradbury v. Rasmussen*, 401 P.2d 710, 715 (1965)]

Estoppel

"Elements essential to invoke the doctrine of equitable estoppel are: (1) an admission, statement, or act inconsistent with the claim afterwards asserted, (2) action by the other party on the faith of such admission, statement, or act, and, (3) injury to such other party resulting from allowing the first party to contradict or repudiate such admission, statement, or act." [*See Celebrity Club, Inc. v. Utah Liquor Control*, 602 P.2d 689 (1979).] Estoppel can also arise from silence when one ought to speak and in failing to do so induces another to believe certain facts exist. [*See Leaver v. Grose*, 610 P.2d 1262 (1980).] The burden of proof is preponderance of the evidence.

Unjust Enrichment/Occupying Claimant

Unjust enrichment has the following elements: (1) enrichment of one party; (2) an appreciation or knowledge of the benefit by the enriched party and (3) the acceptance or retention by the enriched party of the benefit under such circumstances as to make it inequitable for the enriched party to retain the benefit without payment of its value. [*See Berrett v. Stevens*, 690 P.2d 553 (1984).] The burden of proof is preponderance of the evidence.

The parties apparently agree that the law in the State of Arizona is in agreement with that in the State of Utah as to those claims discussed above. They likewise agree that Arizona has no counterpart for the Utah Statute on occupying claimants, 57-6-1 et. seq., UCA. Therefore the claims under the occupying claimant statute would apply only to those claimants occupying land in the State of Utah.

APPLICATION OF LAW TO VARIOUS PLAINTIFFS

The Court will decide the issues presented as to each plaintiff in the order in which the plaintiffs appear in the Amended Complaint.

Cyril Bradshaw

Mr. Bradshaw became associated with The Work in 1953. He was highly educated, holding a Ph.D, and had experience in real estate matters. At time of trial he testified that he is also a master electrician. Bradshaw moved to Short Creek in 1960. He was invited to move to the area from Northern Utah after becoming affiliated with The Work. He agreed to do so. He had a home in Northern Utah which he donated to

The Work prior to moving to Short Creek. He was to be the teacher at the Colorado City Academy, a high school level institution which operated in Colorado City for 20 plus years under his direction.

Bradshaw had seen the Declaration for the UEP in the 1950's but claims he did not actually read it until about 1984. He knew it was recorded and could be obtained but he did not take action to read the Declaration because it just didn't seem important. He claims that he was told by J. Marion Hammon when he moved to the area that he was a member of the UEP. He presented no evidence that the trustees had taken the action required under the provisions of the Declaration to make him a member.

Bradshaw was assigned the use of a small house while he taught school at extremely low wages for about the first 8 years. Finally J. Marion Hammon assigned him a UEP lot upon which to build a home. Bradshaw could not remember the exact words used in the conversation but did recall the use of the word "forever."

He knew that he could not mortgage, sell or leave the lot. He knew he had no ownership of the lot. He had been told from the beginning that the UEP was to be operated for charitable and benevolent purposes. He assumed that his use of the lot was secure because of his membership in the UEP. He freely admitted that he moved to Short Creek out of religious motivation.

After he was assigned a lot to use, Bradshaw spent money and labor constructing a large home where he raised his family. He was assisted in constructing the home by others in the community who worked on his home and contributed

materials. Many of these helpers were uncompensated volunteers associated with The Work and the UEP. He was never told that his right to use the UEP lot could be terminated by the trustees and he never asked about his status. He did pay tax assessments made by Truman Barlow to help pay for the property taxes levied against UEP lands by the counties.

On cross examination Bradshaw testified that he has a selective memory that allows him to remember facts without remembering where he learned them. He has difficulty remembering dates and some details. He admitted that he joined with The Work after undergoing a "personal conversion". He began attending religious meetings in Salt Lake where he heard requests for help in Colorado City. Even before he moved to Short Creek he often came down on weekends to help build up the community and donated money for the projects underway there.

Bradshaw admitted that he often heard J. Marion Hammon speak in religious meetings about the UEP but he ignored the speeches because he "already had that tapestry woven."

Breach of Contract Claims

Bradshaw is one of the ten plaintiffs who have asserted contract claims. He alleges that conversations between him and J. Marion Hammon in 1960, when he moved to Colorado City, and again in 1969, when he was assigned the use of a lot to build on, constituted an offer that he could build on a lot owned by the UEP and use it "forever". He claims that he accepted that offer and that his construction of a home on that lot constitutes part performance sufficient to remove the

oral agreement from the operation of the Statute of Frauds. The burden of evidence is, of course, upon the claimant to establish his claims by the applicable evidentiary standard.

The Court finds that Bradshaw has failed to demonstrate the existence of an express oral contract, even taking his testimony at face value. The Court is concerned about the deficiencies in Mr. Bradshaw's memory and cannot accord his unsupported assertions full credibility. Setting side those concerns, however, the Court finds that the alleged conversations with the now deceased J. Marion Hammon fail to prove that the UEP was offering Bradshaw perpetual and ever lasting use of the lot upon which he was allowed to build his house. In fact Bradshaw remembers very little of the conversation. To establish an oral contract, one must present definite evidence of its terms and existence. No such evidence was contained in the testimony of Bradshaw. In fact, his testimony establishes, beyond question, that he went to Short Creek, taught school, engaged in various commendable religious works and activities, taught school for an very low wage and built a house on a UEP lot because of the depth of his religious convictions, not because he had been promised life long, or perpetual, use of the property.

In addition, the construction of the home on UEP land does not avoid the application of the Statute of Frauds, as the alleged part performance is not exclusively attributable and referable to the oral contract, even if one had been established. An equally plausible reason for the construction of the house was Mr. Bradshaw's admitted motivation to build up the Kingdom of God in Short Creek, as everyone else in the area was doing.

Likewise, and for the same reasons, the Court finds that the implied contract claim of Mr. Bradshaw has not been proven. Nothing in the actions of the parties demonstrates a tacit agreement that the plaintiff would have anything other than the temporary use of the UEP lot until the Trustees determined that the benefit would be withdrawn. A contract does not arise from the unsubstantiated assumptions of one of the parties.

In the Amended Complaint, under the First Claim for Relief, the ten listed plaintiffs allege other contract claims. They first assert that they became members or beneficiaries of the UEP by contributing valuable property to the UEP as required by the Board of Trustees. As stated above under the General Finding of Fact, the evidence does not support that assertion. There was no proof that any of the plaintiffs was ever approved as a member of the trust by action of the Board of Trustees or that the trustees ever determined that any contributions made by the plaintiffs were sufficient for membership. None of the plaintiffs can claim a contract based on membership in the trust. Since plaintiffs were never members of the UEP they cannot claim that they entered into the agreements listed in paragraph 16 (a), (b), and (c) of the Amended Complaint.

The plaintiffs also claim that they were beneficiaries of the UEP and they entered into contracts with the trust based on that status. The Court finds that the evidence does not support that claim as to any of the plaintiffs, as will be discussed hereafter.

The Court finds that the contract claims of Plaintiff Cyril Bradshaw have not been proven by a preponderance of the evidence.

Negligent Misrepresentation

Mr. Bradshaw is also one of the plaintiffs named in the Third Claim For Relief of the Amended Complaint. In that claim it is asserted that in connection with contributions made by the plaintiffs to the UEP, agents of the UEP made certain oral representations of material fact, specifically:

1. that the principal purpose of the UEP was to provide security for its beneficiaries by protecting their property and enterprises from loss for any reason, including bankruptcy, foreclosure or legal actions by enemies from without the movement,

2. that each plaintiff would be a co-owner of the enterprises of the community and would thus share in the prosperity of those enterprises,

3. that each plaintiff would be secure in his home on his assigned building lot and could only lose that home if he chose to abandon it,

4. that the UEP would provide long-term security to the beneficiaries and would provide for them according to their needs.

None of the plaintiffs has presented evidence sufficient to prove this claim. The Court has found that one of the purposes of the UEP, as taught by the trustees in their religious gatherings, was to protect those on UEP land from losing the land to enemies of The Work. No such loss has been proven by any plaintiff.

On the other hand, the evidence does not support the allegation that anyone promised any one of the plaintiffs that he would be a part owner of any enterprise or share in any profits from the trust. No plaintiff claimed that and the vast weight of the evidence is contrary to that assertion.

In fact Mr. Bradshaw did not even think the UEP important until some 24 years after he moved to Short Creek and until the religious dispute had arisen and he realized he was among those no longer in control of the UEP. He never read the Declaration of the UEP, even though he knew it existed. He ignored speeches about it. He assumed that the UEP owned certain business enterprises in the community, but had no authoritative evidence of that. He never made any contributions to the UEP but did to his religion and its leaders. His testimony simply does not support this claim.

The evidence does not support the claim that the plaintiffs were told that they would be secure in their homes and could only lose them by abandoning them. No such representation was made to any plaintiff. Mr. Bradshaw recalled no such representation as his only recollection was that J. Marion Hammon used the word "forever" when he assigned the use of the UEP lot, but Bradshaw could not remember what else was said. The Utah Supreme Court has not included due diligence as an element of this cause of action but has required the analogous element of reasonable reliance. [*See Macck v. Resource Design & Construction, Inc.*, 875 P.2d 239 (1994).] The plaintiffs herein, including Mr. Bradshaw, could not have reasonably relied on the off hand, and abbreviated comments to which they point to create a right of ownership or perpetual use in view of all they knew about the operations of the UEP. The evidence does not support this claim.

Likewise the evidence presented does not support the claim that any plaintiff was told that he would be provided long-term security by the UEP according to his needs. Mr. Bradshaw testified that he was promised, as part of his employment as a school teacher, a place to live, a low wage, and medical care, all of which he received. There was no persuasive evidence of any representation that his long-term security would be met by the UEP.

In paragraph 31 of the Amended Complaint, Bradshaw claims that the UEP omitted to disclose material facts to avoid misleading him.

(a) Mr. Bradshaw was well aware that the UEP was governed by a Declaration recorded on the public records and had been prior to his association with The Work. He chose not to read it, even knowing that it might relate to his right, or privilege, of occupying a UEP lot. If he was mislead by lack of the information in the Declaration, he was as much at fault as the UEP.

(b) Mr. Bradshaw was not specifically told that he would be a tenant at will on the UEP lot until he had already constructed improvements on the lot, nor did he ask. He was apparently satisfied that his "just wants and needs" would be met by his religious leaders and chose not to ask about the terms of his use of the land provided by the UEP. One who seeks relief because of injury from misrepresentations of another cannot simply believe whatever is said. Such a person has a duty to exercise the degree of care to protect his own interests as would be exercised by any reasonable and prudent person under like circumstances. [*See Jardine v. Brunswick*, 423 P.2d

659, 662 (Utah 1967)]. To rely on one word in a conversation in a matter of this import is not reasonable.

(c) The Court is persuaded that Mr. Bradshaw and the other plaintiffs herein were aware, because of the purpose and nature of the movement they were with, that the Short Creek area was being developed as a refuge for the faithful adherents to The Work. Each plaintiff was invited to help build up the community and to practice his own religious beliefs there because he was in harmony with others living there.

If Mr. Bradshaw had read the Declaration which he knew was recorded in Mojave County, he would have learned that even if he was a member of the UEP, he could be expelled and loose all claim on the trust by a majority vote of the trustees for actions prejudicial to the trust, and that as a non-member beneficiary, he could be deprived of benefits conferred by the Trust in the event that the Trustees deemed it unwise to confer the benefit. Mr. Bradshaw cannot now claim misrepresentation because he didn't understand that if he fell out of harmony with the trustees of the trust his right to use trust land could be terminated. Such knowledge was widely available in the community to anyone who inquired.

(d) Mr. Bradshaw never testified that he made contributions to the UEP or its enterprises to gain an interest therein, nor did the other plaintiffs. The inference from their statements was that they considered their contributions to be religious donations to The Work, although the UEP may have benefited.

Mr. Bradshaw's motivation for his labor and money was to comply with the requests of his religious leaders, regardless of the ownership of the project. He never claimed in his testimony that he was mislead by the failure of the UEP to tell him that the trust did not own the projects he worked on. It simply was not a matter of concern to him when the contributions were made as they were religious contributions.

(e) The accountability of the trustees to the beneficiaries is spelled out in the Declaration of which Bradshaw was aware. In addition, no evidence at all was presented on this point during the trial by any plaintiff. No one testified that he or she was mislead by the lack of this information.

The Amended Complaint seems to state that the plaintiffs are seeking reimbursement for all the contributions ever made to the UEP. If so, the evidence is completely lacking in this particular. The evidence presented on contributions was not sufficient to allow the court to determine the contributions made to the UEP, as opposed to The Work. No accounting was presented by any plaintiff. There was no persuasive evidence of any amount of damage claimed.

Nothing in the evidence presented demonstrated that Bradshaw made contributions to the UEP, with the possible exception of the house he built. He stated no claim for damages other than for the house. The Court finds that he has failed to prove his claim for reimbursement for other contributions to the UEP. Likewise, the Court finds that Mr. Bradshaw was not mislead by the representations made, or the omissions claimed. He knew that he could obtain all the information available to J. Marion Hammon by asking, or by

reading the UEP Declaration. He was not in an inferior position to the trust in regard to the extent of his right to use UEP land. In addition, it was not reasonable for an educated man, experienced in real estate transactions, to assume, without investigation or inquiry, that he could build a home on the land of a trust and expect to keep the land "forever" without specific agreement as to that term.

For the reasons stated, Mr. Bradshaw's claim for negligent misrepresentation fails.

Constructive Fraud

Each plaintiff alleges that he was in a confidential and fiduciary relationship with the trustees of UEP because they were the trustees of the trust and also his religious leaders. He then alleges that the trustees had a duty to make full and truthful disclosure of all material facts and to act in his interest. He claims the trustees or the trust' breached the duty by failing to disclose the following material facts.

1. That the trust was governed by a recorded Declaration limiting the plaintiffs' right of use of UEP land.

Mr. Bradshaw's testimony, and the other evidence in the case, does not support this claim. He testified that he knew of the existence of the Declaration and that it was recorded long before he began constructing improvements on UEP land.

2. That Mr. Bradshaw would be a tenant at will on UEP land and could be removed at the will and pleasure of the trustees.

It is true that Mr. Bradshaw testified that no direct communication of this fact was made to him before the tenant at will letter in 1984. However, Mr. Bradshaw was an educated man with prior experience in real estate matters, which should have made him curious about the rights of one who builds on another's property without an agreement as to the term of the tenancy. Mr. Bradshaw did not even inquire as the terms when he was assigned a lot nor did he seek out the Declaration to clarify the situation before beginning construction. The evidence does not demonstrate that Mr. Bradshaw's will and intelligence were overcome because of his relationship with the trustees. In fact Mr. Bradshaw testified that he turned down lots which J. Marion Hammon offered him and held out until he got one he liked. The Court is convinced that the reason Mr. Bradshaw built his home on UEP land was because he wanted to continue in his association with The Work. He understood fully the operations of the UEP, having discussed it with one of the subscribers to the trust before ever associating himself with The Work. He never conceived that he might find himself at odds with the UEP or some of his religious leaders and he now seeks to blame them for his own lack of foresight and judgment.

A confidential relationship is the basic prerequisite for a claim of constructive fraud. The mere fact that the trustees of the trust and the plaintiffs were members of the same religious organization does not automatically create such a relationship. [*See Thatcher v. Peterson*, 437 P.2d 213, 214 (1968).] Mr. Bradshaw made his own choices based on his own desire to be a fully participating member of The Work. He cannot now blame the trust or its trustees for allowing him the privilege it offered to many of its adherents, the use of UEP land for whatever term the trustees felt wise.

Equitable Estoppel

Mr. Bradshaw alleges that UEP should be estopped from removing him from UEP land because the UEP had taken the position that he had an interest in the corpus of the trust. The Court has already found that the evidence does not support either the claim that the plaintiffs were members of the UEP or the claim that membership created any right to the corpus of the trust.

He also claims that the UEP had taken the position that those occupying UEP land had the right to do so in perpetuity. The Court finds that the weight of the evidence is to the contrary. Mr. Bradshaw may have taken the position that he ascribes to the trust but no evidence was presented that the trust ever agreed to allow anyone to occupy property held by the UEP in perpetuity. The best Mr. Bradshaw could come up with was the word 'forever" and he could not even place that word in context. To the contrary was the vast body of evidence presented by others who live in the Short Creek community and who knew the leaders and practices of the UEP well, as well as evidence from those leaders. That evidence clearly showed that the UEP often moved people around on UEP property, asking some to move in favor of others. Some were even asked to leave the community. Some built houses, only to see others move into them. Many testified that it would have been contrary to the very purpose of the UEP to allow permanent use of a lot. J. Marion Hammon himself, by deposition testimony, denied that he ever told anyone they could use a UEP lot forever. The evidence preponderates in favor of a finding that the UEP did not promise permanent use of lands it controlled to individuals using the land. The Declaration of Trust provided that the UEP could extend benefits, or not, as its

trustees thought wise. The weight of the evidence was inconsistent with the claims of plaintiffs.

Mr. Bradshaw never testified that the UEP made representations to him about long-term security, funeral insurance, retirement, and so forth. The evidence does not support that claim as to this plaintiff or any other.

For the reason that the plaintiff has failed to prove that the UEP made statements, or took actions, or did acts inconsistent with statements, actions, or acts later taken, the estoppel claim fails as to Mr. Bradshaw.

Unjust Enrichment/Occupying Claimants

Mr. Bradshaw testified that he resides in Arizona and thus would have no protection under Utah's Occupying Claimant Statute. He does assert a claim under the theory of unjust enrichment, however. There can be no doubt from the evidence presented that Mr. Bradshaw has conferred a benefit on the UEP by improving the lot he was allowed to use by the installation of a home worth far more than the land. There can also be no doubt that the trust was aware of the benefit as its representatives encouraged the construction and the improvement of the lot by the occupant and watched the building going in. The issue is whether, given the facts in this case, it would be inequitable to allow the UEP to retain the benefit without compensation to Mr. Bradshaw. The Court is of the opinion that such a result would be inequitable.

At the time Mr. Bradshaw was assigned a lot, he was encouraged, as were many other plaintiffs, to improve the lot and to build on it. The Court is convinced that neither the

trust and its representatives nor Mr. Bradshaw ever thought about what would happen to the improvements if Mr. Bradshaw became estranged from the UEP, or The Work, but wanted to remain on the property. The prevailing thought within the community at that time was that God would take care of the disaffected by causing them to become discouraged and to leave. Mr. Bradshaw claims he built his home with the intention that he would occupy it "forever", even though the Court has found that he has failed to prove that the UEP agreed to that term. As a practical matter "forever" would necessarily be limited to his lifetime, as there was no indication, even in his version of the facts, that the use of the lot would pass to his heirs upon his death. Nonetheless, he expected to use the property into his foreseeable future. As a result he has invested lots of money and time in the improvement of the property and now, because of a religious disagreement, he faces the possibility of losing the occupancy of the home he has built. Should the UEP chose to remove him from the property he now occupies, the UEP would acquire a large home suitable for housing another of its adherents at little or no cost. The UEP must bear a large share of the blame for the confusion as to the terms of occupancy since it did not communicate to Mr. Bradshaw directly the conditions of his occupancy of the lot, even though the trust was engaged in a long term and wide spread program of settling its people on UEP lands. It would have been easy to prepare a list of the conditions of occupancy and to distribute the list to those preparing to invest heavily in improvements with the encouragement and agreement of the trust.

The Court finds that the circumstances here present would make it inequitable for Mr. Bradshaw to be forced from the home he occupies, during his lifetime, without any

compensation from the UEP for the improvement of the lot he is using. The Court finds that the UEP owns the land and the improvements thereon but imposes a constructive trust thereon in favor of Mr. Bradshaw during his lifetime. In the event that the UEP discontinues benefits to Mr. Bradshaw and discontinues his use of the property prior to his demise, he is entitled to compensation for the then current value of the improvements conferred upon the UEP, minus any contribution to the value of the improvements made by the UEP in the first place, including, but not limited to, aid in the construction or contribution of materials, if any. If Mr. Bradshaw is allowed the use of the home he constructed until his death, the improvements will then belong to the UEP without the necessity of payment therefor. Mr. Bradshaw's right of occupancy is also subject to loss without reimbursement for improvements if he tries to sell or mortgage the property or the improvements, or if he abandons the use of the lot, as those limitations were known to Mr. Bradshaw at the time he built the improvements. Mr. Bradshaw and his co-occupants, if any, shall be liable to the UEP for waste committed upon the property, beyond normal wear and tear, during this occupancy. Declaratory judgment will be entered to that effect.

Connell Bateman

Originally Mr. Bateman was a plaintiff in all six of the claims tried to date. Following the presentation of the plaintiffs' case, and on motion of the defendants, the Court dismissed all of his claims except constructive fraud and unjust enrichment. The Court will now address those remaining claims.

Mr. Bateman occupies a UEP lot in Colorado City, Arizona. He was born into a family associated with The Work. He was assigned the use of a UEP lot in 1976 and thereafter constructed a home and other improvements. He learned of the existence of a Declaration of Trust for UEP in about 1984 and read it later in that year. He was assigned a lot by Pres. Leroy S. Johnson, who was like family to him. He was made no promises about how long he could occupy the lot. He knew the lot was not his and the UEP held title. He knew that he could not sell or mortgage the lot and that if he left, the lot and all improvements would go to the UEP. When he was assigned the lot it was with the encouragement of Pres. Johnson and Edson Jessop that he would build on it and improve it. He was never told that he would be a tenant at will on the property and his right to use the property could be terminated at any time by the UEP, nor was he told that he would lose the use of the lot if he became out of harmony with the UEP or The Work.

He assumed that he was a member of the UEP from birth and claims that he was told that he was a member by Pres. Johnson at the time he was assigned a lot. He presented no evidence to indicate that the trustees ever made him a member in fact. He did show that he had been named as a beneficiary of the trust at one time.

At time of trial he was no longer affiliated with The Work and was associated with neither of the factions in the First or Second Wards in Short Creek. He assumes he has the right to use his assigned lot forever although he was never given that promise by anyone prior to construction of improvements thereon. In 1987 he spoke to President Johnson and was told he could use the lot and home as long as he

wanted but when he left he was to turn the keys over to Pres. Johnson or Edson Jessop.

Constructive Fraud

Mr. Bateman claims that he was involved in a confidential relationship with the trustees of the UEP. The evidence presented does not support that claim. Mr. Bateman's dealings with the trust were through Leroy S. Johnson, presiding officer of both the UEP and The Work. The evidence clearly indicates that Mr. Bateman had a great affection for Pres. Johnson both as "family" and as a religious leader. However, the Court is convinced that Mr. Bateman undertook to develop a lot owned by the UEP as a religious service, not because his relationship with Pres. Johnson resulted in extraordinary influence over him or because his will had been overcome by Pres. Johnson's influence. Prior to building the improvements on the lot, Mr. Bateman had participated in numerous projects to build up the Kingdom, including operating a dairy farm, and serving a work mission and donating all earnings to The Work.

The relationship between the Trust and Mr. Bateman was not a confidential or fiduciary relationship in the sense required to establish this cause of action. [See *Bradbury v. Rasmussen*, 401 P.2d 710 (1965); *Thatcher v. Peterson*, 437 P.2d 213; *Von Hake v. Thomas*, 705 P.2d 766 (1985).]

For these reasons, and those set out in discussing the Bradshaw claims, the Court finds that Mr. Bateman has failed to prove this claim.

Unjust Enrichment

Mr. Bateman has conferred a benefit upon the UEP by constructing valuable improvements on the lot as suggested by Pres. Johnson, the UEP's then presiding officer. The UEP was certainly aware of the improvements and in fact encouraged the construction of them. Having weighed the equities, the Court must determine whether, under the circumstances, it would be unfair for the UEP to keep the improvements without paying for them. The Court is of the opinion that such an outcome would be unjust.

Mr. Bateman was invited to build on UEP land by Pres. Johnson who served as his religious leader and also as the Pres. of the UEP. Pres. Johnson did not tell Mr. Bateman what the term of the use of the property would be, nor did Mr. Bateman ask. It was only after the improvements were underway that the UEP informed Mr. Bateman that he was a tenant at will and could be asked to leave at any time. The UEP knew that there was a Declaration of Trust which would serve to inform Mr. Bateman of the limitations on his use on the property but never brought it to his attention or discussed its terms with him. The UEP must bear the major portion of the blame for the confusion that has ensued. It would be patently unjust to allow the UEP to benefit from that confusion by acquiring a large home almost finished to house another beneficiary. On the other hand Mr. Bateman must share responsibility for some of the confusion since he never made inquiry as to his position on the UEP land or the terms of his use of the land. He simply made assumptions. Mr. Bateman was not able to demonstrate that he had been given any more than the right to use the property during his lifetime for so long as the trust thought wise.

Therefore the Court will award declaratory judgment in favor of Mr. Bateman on the ground of Unjust Enrichment providing for the same relief and subject to the same limitations as that afforded Mr. Bradshaw.

Benjamin Bistline

Mr. Bistline was named as a plaintiff in all six of the claims tried. At the conclusion of the plaintiffs' case, and on motion by the defendants, the Court dismissed Mr. Bistline's claims for implied contract and occupying claimant. Mr. Bistline occupies UEP land in Arizona. The surviving claims are express contract, negligent misrepresentation, constructive fraud, estoppel and unjust enrichment. The Court will now decide those claims.

Benjamin Bistline was born into The Work. He moved to Short Creek in 1945. He learned of the existence of a trust declaration for the UEP in the early 1950's but did not actually see the document until 1978-79. He had asked J. Marion Hammon if he could read the document in the mid 1960's but Hammon said he didn't have a copy. He assumed he became a member of the UEP when he married but he was unable to show that he was actually made a member by the trustees. He was listed as a beneficiary of the UEP at one time. He was told that he could build on UEP property by Richard Jessop. The land he was assigned had once belonged to Mr. Bistline's father. Mr. Bistline built his home between 1958 and 1970. He knew that he did not own the land and that he could not sell, mortgage or leave without losing the home. He was not specifically told that he was a tenant at will until 1987. In 1976 he signed a Quit Claim Deed conveying his interest in the property to the UEP. He intended that the land belong to the UEP. At the time he

signed the deed Mr. Bistline knew that the UEP had moved one Danny Barlow into his partially completed house while Mr. Bistline was away in Idaho. He regained use of the home only after helping Barlow build another house. When Barlow moved out, Mr. Bistline moved back in with the approval of religious leaders.

During 1983, Mr. Bistline participated in a meeting with Sam Barlow, the local police officer, and Sheriff Ken Campbell, the Washington County Sheriff. During that meeting he represented to the law officers that his home and lot belonged to the UEP. He told them that his mother had consecrated that land to the UEP.

At one point in his testimony Mr. Bistline stated that he had been told that he could live on UEP land as long as he wanted. However, when questioned further he was unable to identify the speaker, the time or the exact content of the statement.

Express Contract

The Court now finds that Mr. Bistline has failed to show the existence of an express contract containing the term of his occupancy of UEP land. Mr. Bistline has the burden of convincing the Court that he was extended an offer containing the specific term that he could occupy the property in perpetuity. He has failed to meet that burden. It is not even clear from the evidence that the person who told Mr. Bistline he could stay as long as he wanted had any authority to speak for the UEP. The Court finds against Mr. Bistline on his claim of an express contract as the evidence presented does not prove the claims in the Amended

Complaint and for the reasons stated in discussing the Bradshaw claim.

Negligent Misrepresentation

The Amended Complaint alleges that Mr. Bistline was told that the UEP would provide security for him by protecting the land upon which he resided, that he would be co-owner of the enterprises of the community, that he could only lose use of the home he had built if he abandoned it, and that the UEP would provide long term security for him. Mr. Bistline presented no persuasive testimony that these representations were made to him. He did testify that he deeded his interest in his home to the UEP because he wanted it to belong to the UEP. The Court is persuaded that he was motivated by his desire to fully participate in his religion's efforts toward practicing the United Order. He thought that he was a member of the UEP and The Work and that his just wants and needs would be met, although he had made no effort to determine how one became a member of the UEP or if he had been made a member or what membership entailed. The testimony presented does not support a claim of negligent misrepresentation because there has been no showing that Mr. Bistline justifiably relied on the representations of the UEP, assuming any were made, which he has not proven.

Constructive Fraud

Nothing in the testimony of Mr. Bistline indicates that he was is a confidential relationship with the defendants, as that term is defined in the cases cited above, or that his will in this matter was overcome because of his trust and confidence in the defendants when he made his various contributions to

the building of the religious community. Mr. Bistline was doing his best to be a good member of his religion when he decided to build a house on land which he knew did not belong to him. He trusted, as a matter of his religious faith, that his needs would be met by his religious leaders. He has a right to the free exercise of his religion under the laws of this nation and state. He cannot now claim that he was mislead or that he was defrauded by his own choices. The Court finds against Mr. Bistline on his claim of constructive fraud.

Estoppel

The testimony presented in this case does not support the claim of estoppel contained in the Amended Complaint. Mr. Bistline did not testify that he understood the position of the UEP to be as the Amended Complaint alleges in paragraph 45. The questions presented in this case simply never occurred to the parties until the religious dispute erupted around 1984. Mr. Bistline has failed to carry his burden of proof and did not even testify that he relied on the prospect of an undivided interest in the UEP, or the right to perpetual use of the lot assigned to him (he knew that could change from his experience with Mr. Barlow), or long term security from the UEP. The Court finds against him on that claim.

Unjust Enrichment

Mr. Bistline has conferred a benefit on the UEP by improvements constructed on land owned by the trust and the trust knew of the benefit since the use of the land was conditioned upon Mr. Bistline building thereon. As the Court views the equities in this case, it would be unjust to allow the UEP to require Mr. Bistline to surrender occupancy

of the home he built during his lifetime without compensation to him for the value of the benefit he conferred upon the trust.

As stated above, the UEP is a trust created by The Work to carry out clearly religious goals. Mr. Bistline conferred a benefit upon the UEP in furtherance of his own religious practice and beliefs. Neither the UEP nor Mr. Bistline contemplated the possibility that he would become estranged from The Work and yet still want to remain in the house he had been encouraged to build on UEP land. The UEP must share the majority of the blame for the situation now presented since it did not make clear to Mr. Bistline that he was a tenant at will in the house he built until after he had constructed the home. On the other hand Mr. Bistline clearly intended that the UEP own the home after he was through using it for his own purposes. The Court is of the opinion that it is inequitable to allow the UEP to invite religious adherents to build on its property without explaining fully the limitations on their use of the property and then to terminate the use of the property and take the improvements, within the lifetime of the person to whom use was allowed, without liability for the value of the improvements received by the Trust.

The Court finds for Mr. Bistline on the claim of unjust enrichment and will enter declaratory judgment providing the same relief and subject to the same limitations as that afforded Mr. Bradshaw.

Alma J. Burnham

Mr. Burnham was named in the Amended Complaint as a plaintiff on all six causes tried. At the conclusion of the

plaintiffs' evidence, and upon motion by the defendants, the Court dismissed the claim of implied contract. The Court will now address the remaining claims.

Mr. Burnham occupies land in Utah owned by the UEP. He became involved with The Work in 1946. He testified that he had never seen the Declaration of Trust for the UEP until shown it during the trial. He claims he is a member of the UEP but can't identify when he became a member. He produced no evidence that the UEP ever named him a member by vote of the trustees. He was listed among the beneficiaries of the trust at one time.

He testified that he received the use of a lot on UEP land when he moved to Short Creek. He spoke to J. Marion Hammon and Edson Jessop when he got a lot. He could not remember what was said or by whom, but he surmised that he could use the lot for his residence and for gardening. No other terms or conditions were discussed. He testified that he understood that he would be allowed to use the property throughout his life and his children would have use of it thereafter but he could not say anyone had specifically told him that. He did say that J. Marion Hammon told him the he (J. Marion Hammon) "hoped" that those things would happen. He did know that there were limitations to his use, as he could not sell the property, mortgage it or move away from it without losing it back to UEP.

He testified that he paid for the supplies that went into the improvements. No one ever told him that the improvements were consecrations to The Work and he never intended that they be. He remembers that adherents to The Work were encouraged to participate in the UEP because it was a step

toward the United Order, which was a goal of the religious movement.

Express Contract

The Court finds that Mr. Burnham has failed to establish the existence of an express oral contract relating to his use of the UEP land. He testified as to what he understood and what he surmised but was unable to say that anyone had actually promised him that he would be allowed to use the land for any particular period. The communications he related were insufficient to create a clear and definite contract enforceable by this Court. The Court finds against by Burnham on this claim for these reasons and the further reasons stated in the discussion of Mr. Bradshaw's claims.

Implied Contract

Mr. Burnham's claim for an implied contract fails as well because there was no credible evidence presented from which the Court can infer from the actions of the parties that a contract was formed relating to the claims in the Amended Complaint. The construction of the improvements on the lot owned by the UEP was attributable to Mr. Burnham's effort to live his religious beliefs, not to any commitment that he would have perpetual use of the lot. The same is true for his contributions to his religious organization.

Negligent Misrepresentation

For the same reason stated previously with regard to other plaintiffs' claims, Mr. Burnham has failed to prove that he has a claim for negligent misrepresentation against the trust. He was not promised the things contained in paragraph 30 of

the Amended Complaint, nor did he testify that he was mislead by the failure to disclose the items listed in paragraph 31 of that document. He never made any inquiry into his rights and status on UEP land, nor was that important to him. He entered into possession with little or no information as a freely chosen religious act and cannot now blame others for that decision. Even if he built in reliance upon representations from an agent of the defendants, his reliance thereon could not be seen as reasonable.

Constructive Fraud

Mr. Burnham has failed to prove by clear and convincing evidence that he was in a confidential relationship with the trust or its agents, or that his will in the matters of religion and business was dominated by that relationship. Mr. Burnham did not even claim that such was the case. He located in Short Creek on UEP land because he wanted to practice his religion there among others of like mind, not because he thought there was some reward promised to those on UEP land. He never gave thought to what would happen to his home if he left the religion or the UEP. He never inquired. Yet he knew his home could be lost under some conditions. His choice to proceed was his own, not that of someone who enjoyed his confidence.

Estoppel

Mr. Burnham has failed to prove his claim of estoppel. He did not know the positions of the UEP when he made contributions to his religious leaders. He certainly could not have relied on any such positions in the absence of such information. He has failed to present proof that he was given any assurances by anyone with authority to speak for the

UEP that he would be able to occupy the UEP land no matter what happened or relating to the other claims in the Amended Complaint.

Occupying Claimant

Since the land occupied by Mr. Burnham is in Utah, he is entitled to the protection of Utah's Occupying Claimant Statute. Section 57-6-1 UCA provides:

> "Where an occupant of real estate has color of title thereto, and in good faith has made valuable improvements thereon, and is afterwards in proper action found not to be the owner, no execution shall issue to put the plaintiff in possession of the same after the filing of a complaint as hereinafter provided, until the provisions of this chapter have been complied with."

The sections that follow establish a procedure for determination of the value of the improvements and the resolution of the issues presented.

Our Supreme Court has held:

> "An occupying claimant is required by our statute to establish two elements before he can recover for improvements placed on real property by him: (1) that he has color of title; and (2) that he placed the improvements in good faith. If he fails to establish either one, he cannot recover." *Hidden Meadows Dev. Co. v. Mills*, 590 P.2d 1244 (1979).

The same Court has also stated:

"The good faith of an occupying claimant must be premised upon a reasonable and honest belief of ownership..." *Ute-Cal Land Dev. Corp. v. Sather*, 645 P.2d 665 (1982). [*See also Erickson v. Stokes*, 237 P.2d 1012 (1951) and *Day v. Jones*, 187 P.2d 181 (1947).]

The plaintiffs in this case have not even claimed that they actually own the land they occupy. Each plaintiff took possession without any deed or evidence of ownership understanding that the right to occupy the land would be lost if they left, and that they could not sell or mortgage the land. The Court now finds that the improvements installed by the plaintiffs were not installed in good faith as they were installed upon the property of the UEP, knowingly by those who were using the land by permission.

Unjust Enrichment

For the same reasons previously stated with regard to the other plaintiffs, the Court finds that the UEP would be unjustly enriched if it were to terminate Mr. Burnham's use of his home during his lifetime and thus acquire the improvements to its land without having to compensate Mr. Burnham for the value of the improvements. The Court intends to enter the same declaratory relief in favor of Mr. Burnham as it has outlined for the previous plaintiffs.

The defendants argue that the Utah plaintiffs are not entitled to assert both the occupying claimant statute and the claim of unjust enrichment, as the statute abrogates the common law claim. They have cited no persuasive authority for that contention, however. The Court finds that the occupying claimant statute did not abrogate the common law of remedies for those who have built improvements upon lands

belonging to another. The statute applies to a narrow group of individuals, those acting under color of title and in good faith belief of ownership of the land. That category is not as inclusive as is the one for those who can claim protection under the common law as they need only be persons who built improvements on the land of another, with that other's knowledge, who are faced with loss of the improvements to the property owner. The unjust enrichment theory applies even to those who knowingly build on the property of another, which is the case before this Court.

Claude S. Cooke

Plaintiff Cooke was named as a plaintiff on all six of the causes tried. At the conclusion of the plaintiffs' evidence, and on motion of the defendants, the Court dismissed all of his claims except constructive fraud and unjust enrichment. The land he occupies is in the State of Arizona.

Mr. Cooke was born into The Work and has lived in Short Creek all his life. He knew of the existence of the UEP from the time he was very young and learned who the trustees were when he was in his late teens. He had high regard for Pres. Johnson and thought he was like God. He would have killed if asked by Pres. Johnson. He never saw the UEP Declaration until 1987 or so. He never asked to see it. He never heard its contents discussed in any forum. He thought he was a member of the UEP automatically but he was not sure how one became a member. He thought the UEP owned many businesses in the area but no one speaking for the UEP ever made that representation to him or promised him any interest in any business.

About 1974, he requested to be allowed to use a UEP lot to build a home. Pres. Johnson told him to go find Edson, get a lot, build a home, and then he would be given "a bird to put in his cage," meaning a wife. He was never promised any particular terms relating to the use of the lot. No period of time was mentioned. He built a large home and paid for materials and labor. He didn't intend his home to be a consecration to the UEP or a donation to The Work. He never considered his status on UEP land. He thought he owned the land although he knew that he had no ownership documents, could not sell, mortgage or leave or all would revert to the UEP. He was never told that he was a tenant at will until notified after the split into the two "wards."

Constructive Fraud

The first element of this claim is the existence of a confidential relationship. The Court finds that such a relationship did exist in Mr. Cooke's case. The Court is convinced from the evidence that Mr. Cooke had great trust and confidence in Pres. Johnson. He thought Pres. Johnson was like God and would have killed if directed to do so by Pres. Johnson. When he sought use of a UEP lot he was encouraged to build a house on the lot and if he did so he would be given a wife as a reward. Mr. Cook had lived in Short Creek all his life and had been devoted to The Work up to that time. Pres. Johnson was his religious leader and he felt constrained to carry out the direction he had been given.

The Court finds that Pres. Johnson had gained the trust and confidence of Mr. Cooke and offered him an extraordinary inducement to build improvements on the trust's property, specifically a wife. Of course, it was Mr. Cooke's desire to build the improvements in the first place, which is

why he approached Pres. Johnson and asked for a lot. Clearly the inducement and influence provided by Pres. Johnson did not overcome the will of Mr. Cooke, but was supportive of Mr. Cooke's prior decision to build a house on UEP ground.

There is another flaw in Mr. Cooke's claim of constructive fraud. Even if Pres. Johnson had dominated Mr. Cooke's will in influencing him to build on UEP property, one could not reasonably foresee that Mr. Cooke would build without any inquiry as to his rights on the property, the term of his occupancy, the legal status of his improvements, and so forth. Any reasonable person would have made such inquiries before building and Mr. Cooke cannot hold Pres. Johnson, or the UEP, responsible for his own lack of investigation and effort in protecting himself. For this reason, even though there appears to have been a confidential relationship and extraordinary influence exercised, the claim for constructive fraud fails.

Unjust Enrichment

There can be no dispute that Mr. Cooke has made valuable improvements to the property of the UEP with its encouragement and knowledge. The Court now finds that it would be unjust and inequitable to allow the UEP to take the improvements during Mr. Cooke's lifetime without compensating him for the value of the improvements to the UEP.

The equities in this matter weigh in favor of the plaintiff. Prior to the construction of the improvements on UEP land, Mr. Cooke was never told that he was a tenant at will and could be removed from the land at the whim of the trust. He

was never shown the declaration, nor informed of its existence and contents prior to the improvements. He was inexperienced in matters of business and did not even know how land was transferred. He thought that he had been given a UEP lot and the trust did nothing to disabuse him of that notion. The trust must bear the responsibility for the misunderstanding that has arisen about the extent of Mr. Cooke's rights to use the UEP land. Although the Court has found that Mr. Cooke did not act reasonably in building without an inquiry as to his rights, the trust did nothing to inform him of the limitations on this occupancy, even as he was invited and encouraged to build on UEP land and even as the trustees saw the improvements being constructed. The greater portion of the blame lies with the trust.

The Court will enter a declaratory judgment in favor of Mr. Cooke, providing the same relief and subject to the same limitations as that afforded Mr. Bradshaw.

Donald B. Cox

Mr. Cox was originally named in the Amended Complaint as a plaintiff in all six of the claims tried. At the end of the plaintiffs' evidence, and on motion of the defendants, the Court dismissed only the implied contract claim. The remaining claims will now be examined.

Mr. Cox occupies UEP land in Utah. He moved to Short Creek from Salt Lake in 1968. Prior to that move he spoke to J. Marion Hammon in Salt Lake and was asked to do a project. An assignment was made to Mr. Cox, which he carried out, to arrange to purchase a home from one Harold Blackmore in the Short Creek area. Mr. Cox spoke to Mr. Blackmore and agreed to buy his home on UEP land. He did

so using funds furnished by Fred Jessop, presumably belonging to the UEP. Mr. Cox then took up residence in that house while building his own home.

Following the Blackmore incident, Mr. Cox and J. Marion Hammon took a ride around the Short Creek area and Mr. Cox was invited to pick out a lot to build on. Cox testified that Hammon said, "I'd like you to build a nice home, a good home. Build it to last. I'd like you and your children to live there as long as you want. " No other conditions on his use were discussed, however he knew that the UEP would hold title to the property and that he could not sell, mortgage or abandon the property or it would revert to the UEP. No one told him that he was a tenant at will. He also knew that the UEP had as one of its purposes the protection of the land from the enemies of The Work.

Mr. Cox built improvements upon the lot. He did not intend that they were a religious donation to either the UEP or The Work. He intended that they be used by his family.

Mr. Cox knew there was a written declaration sometime in the mid 1960's. He had never seen it or requested to see it before he moved onto the UEP land. He was unable to show that he had been made a member of the UEP but he was on a beneficiary list at one time. He testified that he thought he was promised a pension in his old age but he was unable to be specific about the terms of that promise or the identity of the promisor.

Express Contract

The Court finds that the representations made to Mr. Cox did not create an express contract giving him the right to use

UEP land in perpetuity supporting the other contract claims in the Amended Complaint. Even the language testified to by Mr. Cox amounts to no more than a statement of a desire, a hope, a wish that Mr. Cox would be allowed to remain on the property throughout his life and his children after him. He was not promised that no one would interfere with his use of the property, no matter what he did. He understood that the land belonged to the UEP and that there were conditions on his use of the land. He understood that he needed the permission of the UEP to occupy the land. Nothing said by J. Marion Hammon canceled those limitations nor did those representations of Mr. Hammon's aspirations create an enforceable contract. Likewise the evidence does not support the other contract claims in the Amended Complaint. For these reasons, and those discussed with regard to the Bradshaw claims, the Court denies relief on these claims.

Negligent Misrepresentation

The Court finds that the evidence fails to establish a claim for negligent misrepresentation as to Mr. Cox. The Court is convinced that Mr. Cox moved onto UEP property as part of his religious practice and for the purpose of taking advantage of the safety and protection available to those in the Short Creek area. He did not build improvements because he thought there was some monetary reward in it for him. He was building up the Kingdom, just like his neighbors around him. That is why he undertook no inquiry as to this rights on UEP property. It was not important to him. That is why he never followed up on the suggestion that he might be entitled to some pension in his old age. His was a religious motivation.

One who asserts a claim for negligent misrepresentation must prove that he took reasonable steps to ascertain the truth. Mr. Cox has failed to prove any diligence whatsoever on his own part. He knew he was being offered the use of another's land and yet made no attempt to define his rights or the risks therein. He knew that there was a written declaration which might define his status, but chose not to pursue the reading of it. He failed to protect himself even though the means for doing so was available. He cannot now claim to have been deceived by the silence of the land owner when he never asked even the most obvious questions.

Constructive Fraud

The Court finds that Mr. Cox has failed to prove by clear and convincing evidence that he was in a confidential relationship with the trust or its trustees or that anyone overcame his will by undue influence. The Court so finds for the same reasons stated with regard to the previously discussed plaintiffs.

Estoppel

The Court also finds that Mr. Cox has failed to prove his claim of estoppel as he has failed to identify any act, statement, or admission upon which he relied. The Court is convinced that Mr. Cox built on UEP property for his own religious reasons and not in reliance on any representations by the UEP as to his rights of occupancy. In any case he made no effort whatsoever to inform himself of his rights. He cannot now profit from his own failure to act by casting blame on the owner of the land he asked to occupy. In addition the evidence fails to show that Mr. Cox knew the

position of the UEP or relied thereon to his detriment relating to the claims in the Amended Complaint.

Occupying Claimant

The Court finds against Mr. Cox on his claim of occupying claimant for the same reasons stated with regard to Mr. Burnham.

Unjust Enrichment

The Court finds that Mr. Cox has conferred a benefit upon the UEP by improving its land and that the UEP knew of and even encouraged the improvements. In weighing the equities, and for the same reasons stated with regard to the previously discussed plaintiffs, the Court finds that the UEP is primarily responsible for the confusion as to the rights of those building on UEP land and that it would be manifestly unjust and inequitable to allow the trust to take the improvements without compensation. The Court will enter declaratory judgment in Mr. Cox's favor providing the same relief, and subject to the same limitations, as that provided to the other plaintiffs previously discussed.

Harvey Joseph Dockstader Jr.

Mr. Dockstader was a plaintiff in the Amended Complaint as to each of the six claims tried. At the conclusion of the plaintiffs' case the Court dismissed the claims of implied contract and occupying claimant (Arizona land). The Court will now examine the remaining issues.

Mr. Dockstader was born into The Work in 1946. He moved to Short Creek in 1960 with his family. He heard of

the UEP in about that time frame. He worked on a UEP farm and had lots of contact with trustees of the trust. He first saw the Declaration in the mid 1980's. He knew early on that a written declaration existed but never asked, or was informed, of its contents before then. He received his first UEP lot from J. M. Hammon who told him that he had done a good job for the priesthood and was entitled to share in the benefits. Hammon told him that one of the benefits of living on UEP land was that it couldn't be sold or mortgaged and therefore it could not be lost by foreclosure. Hammon told him that "they" could live there as long as they wanted.

He opined that he became a member of the UEP in the Fall of 1965 when he was given the use of a lot. He produced no evidence that the trustees had made him a member by voting or that he was promised membership. At one time he was named as a beneficiary of the UEP in documents recorded in Arizona.

Mr. Dockstader received a lot from the UEP after his arrival in the area. He built a small house. Later he built a larger home on another piece of property in the area which did not belong to the UEP and abandoned the small house to the UEP. He bought and paid for the land and the larger house, then suffered some business losses and the larger home was foreclosed. In the winter of 1975-76 he went to Pres. Johnson and requested to be allowed the use of a lot on UEP ground. Pres. Johnson gave him permission to build onto his mother's home on ground she had previously contributed to the UEP. He testified that Pres. Johnson told him that he could live there as long as he wanted. He knew he was building on land he did not own and that he could not sell, mortgage or abandon it. He did not think of his house as a consecration to the UEP or The Work. He had never

been told that he was a tenant at will until he was notified by mail in the 1980's. Mr. Dockstader did testify on cross examination that he had real estate training in 1979 and was a real estate agent in the State of Arizona.

Express Contract

The Court finds that Mr. Dockstader has failed to prove the existence of an express oral contract regarding the use of UEP land or the other claims in the Amended Complaint. The casual conversation to which he testified does not contain clear and definite terms enforceable by the Court. There was no mention of the term of use being granted or the limitations on occupancy. Mr. Dockstader was simply given permission to build onto his mother's home, which he has done.

Mr. Dockstader never testified that he was promised an undivided interest in the corpus of the UEP or the enterprises in the community or that he would have the use of any land in perpetuity. For these reasons and those discussed with regard to the claim of Mr. Bradshaw, the Court denies this claim for relief.

Negligent Misrepresentation

The Court is unpersuaded by the evidence presented that Mr. Dockstader has proven this claim. He had occupied UEP property previously and understood how the program functioned. He knew the land he was building on did not belong to him and that he could lose its use upon the occurrence of one of several events. He had sought and obtained permission to build on UEP land without even the slightest inquiry into his status on the land. He knew there

was a written trust document but never asked to see it or even inquired about its contents. It was not reasonable for Mr. Dockstader to rely on the casual discussion he had with J. Marion Hammon and he took no reasonable steps to learn the truth of his situation. His reliance on information from the trust, or the lack thereof was unreasonable.

For those reasons stated with regard to previous plaintiffs as well as those set out above, the Court finds that Mr. Dockstader has failed to prove his claim for negligent misrepresentation.

Constructive Fraud

The Court finds that Mr. Dockstader has failed to prove this claim as well. Mr. Dockstader has presented no testimony that would convince this Court that he was in a confidential relationship with the UEP or its agents or that he was subjected to extraordinary influence when he was allowed the use of UEP property as he requested, or that his free will was overcome by an influence from the UEP. He could have clarified his status with the most basic of inquiries but he did not do so. For the reasons stated with regard to previous plaintiffs, the Court finds against this plaintiff on this claim.

Estoppel

The Court finds that Mr. Dockstader has failed to prove the elements of estoppel. He never testified that anyone connected with the UEP leadership told him that he would be a co-owner of all property held by the UEP or that the UEP would take care of his long term needs. He claims that he was told he could occupy UEP property for as long as he

Thirteenth Affirmative Defense

To the extent that Plaintiffs seek to have this Court substitute judicial management in place of the judgment of the Trustees of the United Effort Plan and the Fundamentalist Church of Jesus Christ of Latter Day Saints, relative to membership, religious authority, control of religious organizations, participation in church programs, and/or allocation of the financial or property resources of the Fundamentalist Church of Jesus Christ of Latter Day Saints, directly or indirectly, relief of this type is prohibited by the First Amendment to the United States Constitution and Art. I. Sec. 4 of the Constitution of the State of Utah.

Eighteenth Affirmative Defense

Plaintiffs assert that the representations which constitute the basis for their contract and misrepresentation claims were made during the course of sermons and religious teachings during religious services offered by the religious association now organized as the Fundamentalist Church of Jesus Christ of Latter Day Saints. Unilateral religious instruction during church services, made by church leaders to the congregation, including solicitations for the financial support of the church, its leaders, and programs, cannot, as matter of law, serve as the basis for claims grounded in contract and/or misrepresentation.

Nineteenth Affirmative Defense

Religious instruction during religious services is religious speech, and is protected as such under the First

Amendment to the Constitution of the United States, and Art. I. Sec. 15 of the Constitution of the State of Utah. Constitutionally protected religious speech may not be treated as commercial or contractual speech giving rise to commercial or contractual obligations.

Twentieth Affirmative Defense

Plaintiffs at all relevant times had actual and constructive knowledge that the representations which they describe as giving rise to the contract and misrepresentation claims presented in the Complaint were religious speech, entitled to constitutional protection.

Twenty-Fourth Affirmative Defense

The operational policies of the United Effort Plan regarding the use of lands owned by the United Effort Plan are consistent with the historic teachings of the Fundamentalist Church of Jesus Christ of Latter Day Saints. expressed regularly in church sermons, and described in sacred scripture. Church members were regularly taught that the individuals who did not support the religious work of the Church must vacate United Effort Plan lands.

At the trial court level, the petitioners continued to advance defenses based on the protection afforded by the First Amendment to the United States Constitution. In the petitioners' Memorandum filed in support of their Motion for Summary Judgment, pages 14-16, the petitioners urged the court to dismiss the complaint on religious grounds:

D. *Religious teaching and the United Effort Plan*

The United Effort Plan, and its role in the fundamentalist religious community, was a regular topic during the thousands of religious meetings held under the auspices of the Priesthood Work during the last 50 years. Virtually every communication concerning the UEP was expressed by members of the Priesthood Council or other religious leaders to the gathering attending regular Sunday meetings, Priesthood meetings, and theology classes. The Plaintiffs have been completely unable to come forth with evidence of specific statements (including the time, date, place, and speaker) where they were told anything that contradicted with religious teachings concerning the UEP offered at religious meetings.

The Defendants have conducted a massive review of incomplete and partial records, produced haphazardly over the last 40 years, to create a partial schedule of religious meetings held, including the names of some of the individuals attending those meetings. This information has been produced to Plaintiffs.

These records identify 1,780 religious meetings from 1958 to 1986 held under the auspices of the Priesthood Work. The records show that at least one or more of the Plaintiffs attended at least 1,390 of these meetings.

The Defendants have also assembled an incomplete record of teachings offered at these religious meetings concerning the UEP. Exhibit "D" sets forth excerpts of those teachings which address the United Order and the United Effort Plan.

At those meetings, Church President Leroy S. Johnson also regularly urged those in attendance to study the Journals of Discourses, re-published under his direction in the late 1950s. Between 1874 and 1884, at least 47 sermons contained in the Journals of Discourses emphasized the critical importance of United Order principles to personal salvation.

In the face of these teachings, it is patently incredible to claim, as the Plaintiffs' pleadings assert, that the UEP was nothing but a commercial enterprise which had nothing to do with the Priesthood Work or the United Order.

Finally, the Plaintiffs' own statements under oath, as opposed to the assertions in their pleadings, frankly recognize the religious character of the UEP. Exhibit "E" contains a selection of such statements, with record references.

E. *Conclusion*

The UEP is a religious and charitable trust established by the Priesthood Work in 1942 as a step towards the United Order, a principle of the Restored Gospel.

Despite years of litigation, Plaintiffs remain completely unable to produce any evidence raising a genuine issue of material fact regarding the religious and charitable character of the United Effort Plan. The law of trusts mandates that this Court give effect to the will of the religious trustors, as declared in the Declaration of Trust, and as implemented by their religious successors

in the Fundamentalist Church of Jesus Christ of Latter-Day Saints.

The petitioners preserved their constitutionally based affirmative defenses based on religious freedom in the schedule of contested issues of law set forth in the the Pre-Trial Order, pages 24-25:

8. May persons who donate money to a religious group sue for a refund when they no longer follow the principles of the leadership and majority of the members of the group?

9. May the court adjudge the appropriateness of the use of funds donated to a religious body for religious purposes?

10. May the plaintiffs maintain claims based upon the alleged statements of deceased men, allegedly made in the 1950s and 1960s, and witnessed by no one other than the plaintiff asserting the statement as the basis of his or her claim?

11. Are the plaintiffs claims barred by the doctrines of estoppel, waiver, authorization, laches, and ratification?

12. Because the relief plaintiffs seek would compromise the religious conduct of thousands of faithful church members by terminating the religious foundation of the UEP, does equity prevent the court from granting plaintiffs the relief they seek?

14. Religious instruction during religious services is religious speech, and is protected as such under the First Amendment to the Constitution of the United States. and Art. I, Sec. 15 of the Constitution of Utah. Constitutionally protected religious speech may not be treated as commercial or contractual speech giving rise to commercial or contractual obligations.

15. Defendants incorporate by reference the affirmative defenses set forth in their Answer to Amended Complaint and do not waive the defense set forth therein.

In their Post Trial Memorandum, page 4-7, the petitioners once again urged the trial court to appreciate the centrality of the religious issue at stake in this matter:

B. *The "Neutral Principles of Law " Doctrine Does not Allow the Court to Ignore the Religious Setting in Which this Case Arose.*

Plaintiffs urge that "neutral principles of law" require the court to ignore this circumstantial evidence [religious context of statements of deceased religious leaders] because the First Amendment requires the court to blind itself to all evidence of religion in resolving the dispute. This is a serious misstatement of the "neutral principles" doctrine. The "neutral principles" doctrine does not require the court to engage in the narrow, incomplete analysis which the plaintiffs advocate and which is in a very real sense their only hope in this case. Neither does it permit the court to resolve issues of religious faith by framing judicial discussion in neutral legal language.

Neutral principles does not allow the court to ignore circumstantial evidence of the pervasive religious culture of the community or the religious faith and practices of the key players in the dispute. Rather, "neutral principles" is a narrow doctrine which precludes the court from resolving a question of religious doctrine or polity in the course of its resolution of a dispute. *Jones v. Wolf*, 443 U.S. 595, 607, (1979). The doctrine does not permit the court to ignore the implications of religion in a dispute. To the contrary, it requires the court to carefully consider evidence of religious belief and make a threshold determination of the role religious doctrine plays in resolution of the dispute.

Although a form of the "neutral principles" analysis can be found as far back as *Watson v. Jones*, 80 U.S. 679 (1871), the doctrine was really first developed in *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1968). Like other "neutral principles" cases, the Hull case involved a dispute over ownership of a meeting house. The Supreme Court held that the lower court's attempt to determine which faction had departed from church doctrine violated the First Amendment, but that in certain limited cases it might be possible to resolve such an ownership dispute using "neutral principles" of law. The court stated that "the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes, " 393 U.S. at 449, and that religious people must have "power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Id.* at 448. The message of Hull is that only where here the court is persuaded that, in fairness, the

dispute between the parties does not turn on doctrinal issues, may the court become involved. It may not simply use "neutral principles" as a pretext to ignore the religious issues in dispute. *Jones v. Wolf*, 443 U.S. at 602.

In fairness, the dispute between the parties here involves a much larger set of communications between the parties than simply the snapshot in time when each plaintiff was assigned the use of a lot. The plaintiffs were not simply assigned a lot. They were granted permission to participate in the United Order effort so long as they remained faithful. Merrill Harker described his "contract" as a "stewardship." The defendants' position, that permission may be revoked, is consistent with the documented fundamentalist belief that all blessings, including participation in the United Order, are contingent upon faithfulness in the Work. The plaintiffs' position, that permission to participate in the Effort is irrevocable, has no support in religious scripture, and is internally inconsistent. A "consecration" is a religious gift. It does not create enforceable legal rights.

Plaintiffs completely misapprehend the neutral principles doctrine. They assert that the court would violate neutral principles if it is found that the UEP property was subject to priesthood control. (Plaintiffs' Brief pp. 12, 14). Plaintiffs have the analysis reversed. Under neutral principles, the court must make that threshold determination. The court cannot accept the plaintiffs' invitation to substitute neutral principles of law for the parties decision that religious precepts would control.

C. *Boundaries of the Defendants' Free Exercise Rights.*

> There can be no dispute in this case that the UEP is a religious institution. All of the plaintiffs conceded at trial that the UEP was a "step toward" the United Order. Defendants have previously pointed out the language of religion contained in the trust document. The First Amendment to the U.S. Constitution and Article I, section 4 of the Utah Constitution both guarantee the right of religious exercise free from governmental interference. . . .
>
> This case is about the future right to manage real property consecrated by religious people during the last half century to the Priesthood Work and deeded to the United Effort Plan Trust. The court may not decide, expressly or implicitly, who is entitled to membership in the Trust; may not divorce the Trust from its religious parent, the Fundamentalist Church of Jesus Christ of Latter Day Saints; and may not substitute its judgment for that of the Bishop regarding the distribution of benefits according to the "just wants and needs" of the members."

The trial court, in its Memorandum Decision issued Jan. 11, 1996, pp. 91-92, rejected the religious protection arguments advanced by the petitioners. *See* Appendix A, pp. 96A-97A.

The petitioners challenged the decision of the trial court on the religious issues in its appeal to the Utah Supreme Court. The Utah Supreme Court affirmed the decision of the trial court, specifically addressing these issues at 351 Utah

Adv. Rep. 3, 9-10 (reproduced at pages 28C-30C of Appendix C.

APPENDIX F

DECLARATION OF TRUST

STATE OF UTAH)
:ss
COUNTY OF SALT LAKE)

KNOW ALL MEN BY THESE PRESENTS: That we, the subscribers and trustees hereto have this 9th day of November, 1942, entered into an agreement and contract to create a trust under which the appointed and constituted trustees hereunder shall be empowered to operate as hereinafter set forth.

To this end the subscribers associate themselves together in the formation of a trust for the purposes hereinafter stated, and without personal liability to the members hereof or to the public. It is intended and proposed that all others than the subscribers hereto who may become members in this association ipso facto agree to accept the terms of this instrument and declaration of trust to all intents and purposes as if they were the original subscribers hereto. Further, it is understood and agreed that we and such other members as may hereafter come into said association are associated together merely and solely for purpose of being cesti que trustents of the trust hereby created, thus being entitled to the equitable and beneficial interests of all profits and property, both personal, real and mixed, of the trust estate hereby created, in accordance with their respective just wants and needs as determined from time to time by the Board of Trustees and as the trust estate may be able to respond thereto.

The association shall be known as the UNITED EFFORT PLAN.

We do now covenant and declare that the following are and shall be the fundamental articles of said trust by which we and all persons who at any time hereafter may transact any business with said trustees pertaining to the trust shall be bound and concluded. The contracting parties and trustees herein signify and confirm by their signatures to this instrument their acceptance of all its terms and their obligation to perform and discharge the duties imposed by this instrument.

I

John Y. Barlow Leroy S. Johnson

Joseph W. Musser J. Marion Hammon

Rulon T. Jeffs

are hereby designated trustees of said trust, with powers and duties, and the limitation of the same, as hereinafter set forth.

II

Joseph W. Musser, trustee, is to fill the office of Secretary, and Joseph W. Musser, trustee, is to fill the office of Treasurer, and shall perform such other duties as are necessary and usually performed by such officers in a similar business; but it is specifically understood that they shall have no power to bind the trust by contract except as such powers are delegated to them in writing by a majority of the trustees, or by a resolution passed at a regularly called meeting of the trustees.

III

John Y. Barlow, trustee, shall be President of said association with powers, duties, authority and rights to do all things necessary in assisting to carry out the purposes of said trust as hereinafter set out, and said trustee, acting with the other trustees, is hereby empowered to execute all contracts, deeds, transfers, assignments and other instruments to pass title to property, bind the trust estate as may be deemed essential to the interests of the trust; provided, however, that in the absence of the President or in the event of his inability to act through sickness or otherwise, the Vice-President may act in such duties; such instruments also being signed by the Secretary or Assistant Secretary in attestation, with the seal of the association impressed thereon.

IV

Leroy S. Johnson, trustee, shall act as Vice-President of said association.

V

The trustees aforesaid and their successors in trust shall hold the legal title to all property that may be acquired by or for the benefit of the trust estate, and shall have and exercise exclusive management, disposition and control of the same, subject to the terms and provisions of this Declaration of Trust.

VI

The trustees may appoint a General Manager, Assistant Secretary, Assistant Treasurer, or other officers who may or

may not be trustees, and the respective duties of whom shall be designated by the Board of Trustees from time to time.

VII

The Board of Trustees shall not be less than three, nor more than nine in number; provided, that upon their own initiative and their own action the Board of Trustees may increase the board membership to any number deemed advisable of the best interests of the trust, and may choose additional trustees in accordance with such action.

VIII

The purpose and object of the trust shall first be charitable and philanthropic, its operations to be governed in a true spirit of brotherhood; and to accomplish such purpose, it may engage in any and all kinds of legitimate business ventures; provided, however, that such endeavors or adventures of whatsoever name of nature shall in no wise conflict with the Constitution of the United States, or the constitutional laws of the land where such operations may be carried on.

IX

The trustees shall not be liable to the members of the trust estate for error in judgment in prosecuting and managing the trust property, interest or business, nor for any act done by them, or either of them in the course of such management, nor for omission to act in the execution of this trust, except such acts as involve bad faith on their part; nor shall they be liable for the acts or omissions of each other, nor for the acts or omissions of any officer, agent, or servant appointed or acting for them; and should they or either of them be held

personally liable on any tort or breach of contract in the prosecution of the trust estate, they or either of them will be entitled to indemnity out of the trust estate to the extent of such liability.

X

The trustee shall have authority to fix all salaries or other compensation, both for themselves and for other employees or agents of the trust and may pay the same out of the trust funds; and such salaries or compensation shall be reasonable and consistent with the purposes and condition of the trust estate.

XI

A trustee or other officer may be removed at any time for cause, misconduct, or breach of trust, by a majority vote of said trustees at a special meeting called for the purpose; and upon the death, removal, or resignation of any trustee or other officer, such vacancy or vacancies may be filled by the remaining members of the Board of Trustees.

XII

Membership in the trust estate is established for the signers of this instrument and who form the first Board of Trustees, by the conveyance to the trust estate of the following described property, situated in Mohave County, State of Arizona, to-wit:

Commencing 80 rods north of the south-west corner of Section 31, Township 42 north, Range 6 west, Gila and Salt River Meridian; and running thence east 240 rods;

thence north 66 rods more or less to the county road, thence west along south boundary of county road 240 rods to a point 72-1/2 rods north of the place of beginning, thence south 72-1/2 rods to the place of beginning, containing 104 acres, more or less.

Also Lot 6 and the south-east 1/4 of the south-west 1/4 of said Section 31.

Also Lots 3, 4, and 5 and the south-east 1/4 of the north-west 1/4, Section 6, Township 41 north, all being in Range 6 west.

Also Lots 1, 2, 3, and 4 and the south ½ of the north-west 1/4, the south-east 1/4 of the north-east 1/4 Section 1, Township 41 north of range 7 West, of above Meridian in Arizona.

Containing in all 619 acres more of less.

Also, beginning at a point 40 rods south of the north-east corner of Section 6, Township 41 north, Range 6 west, above Base and Meridian, and running thence west 20 rods, thence south 40 rods, thence east 20 rods, thence north 40 rods to place of beginning, and containing 5 acres more or less.

Evidence of membership shall be shown in the books of the association. A membership certificate may, in the discretion of the trustees, be issued to each member; but such certificate shall not be transferable, nor carry title to any of the property or assets of the trust.

The proceeds arising from the operations of the trust estate shall be used by the trustees for the performance of this trust as herein provided, and any profits arising from the conduct of the business shall become part of the corpus of the trust fund. The trustees are hereby authorized to set aside from time to time such portions of the net income as they may think proper as a surplus out of which to declare dividends; provided, however, that from time to time the said trustees may make a division of the trust fund or property as may by them be deemed advisable to individual members of the trust, or all of them, strictly in accordance with their just wants and needs; and provided, further, that the trustees may render needed assistance to non-members of the trust when deemed wise by them.

Further and additional membership shall be established and added to by the consecration of such property, real, personal or mixed, to the trust in such amounts as shall be deemed sufficient by the Board of Trustees; provided, however, that any member may be expelled or excluded from the trust for actions prejudicial to the interests of the trust, by a majority vote of the Board of Trustees, at a special meeting of the Board called for that purpose; and provided, further, that any member being thus expelled or excluded from the association shall have no further claim upon the trust estate.

XIII

This trust shall continue for such time as the business proves to be advantageous, but may be terminated sooner by the trustees if they deem it advisable so to do for the best interests of the trust estate and the members thereof.

XIV

Membership in said association shall not entitle the member to any part of the trust property, either personal, real or mixed; nor to the right to call for a partition or division of the same, or for an accounting; nor shall any member have any right to amend, alter, or terminate this trust; provided, however, that amendments may be made to this Declaration of Trust by a majority vote of the Board of Trustees.

The trustees shall have no power to bind the members personally, and the members and all parties whosoever extending credit to, contracting with, or having any claim against the trust, shall look only and solely to the funds and property of the trust for payment under such contract or claim, or for any debt, damage, judgments or decrees, or for any money or property that may otherwise be due or become due or payable to them from the trustees, so that neither the trustees or members at any time shall be personally liable by themselves, or by any contract which any officer or agent of the trust shall give or enter into. It shall be the duty of the trustees to refer to this Declaration of Trust and to stipulate that any contract or obligation entered into by them shall be subject to all the terms and conditions of this Declaration of Trust.

Further, it is declared that any person who shall accept a membership in said trust ipso facto becomes a party to this Declaration of Trust and shall be bound and concluded by all the terms and conditions thereof.

XV

The death of a member or trustee during the continuance of this trust shall in no wise operate to terminate the trust, nor shall it entitle the legal representative of the deceased member or trustee to an accounting or to take any action in court or elsewhere against the trustees.

XVI

The original of this Declaration of Trust shall remain a part of the files of the Board of Trustees. It may, however, be recorded in the offices of the county recorders in the states wherein the property of the trust may be located. The general office of the trust shall be at Salt Lake City, Utah, unless and until it be moved elsewhere by act of the Board of Trustees. The trust may also establish branch offices by action of the trustees.

XVII

In the event of the termination of this trust, the then members of record shall participate in the distribution of all the properties belonging to said trust estate, and the assets shall be distributed upon the basis of share and share alike.

XVIII

To eliminate any question which might be raised as to the intention of the parties to this instrument, as well as cestui que trustents, it is hereby stipulated and declared that the purpose is to create a trust and not a partnership.

XIX

The trust shall have a seal which shall be of such form and device as the trustees may determine; and it may be changed from time to time.

IN WITNESS WHEREOF, we, the trustees and original contracting parties under this Declaration of Trust, sign our names in duplicate, original in authorization, the day and year first above written.

s/ John Y. Barlow

s/ Leroy S. Johnson

s/ J. Marion Hammon

s/ J. W. Musser

s/ Rulon T. Jeffs

STATE OF UTAH)

:ss

COUNTY OF SALT LAKE)

Before me, the undersigned authority personally appeared John Y. Barlow, Leroy S. Johnson, J. Marion Hammon, J. W. Musser and Rulon T. Jeffs, known to me to be the persons whose names are subscribed to the foregoing instrument and severally acknowledged to me that they executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

Given under my hand and seal this 9th day of November, 1942.

s/ Charles F. Zitting
Notary Public, residing at
Salt Lake City, Utah

Commission Expires:
October 29, 1943

CERTIFICATE OF AMENDMENTS TO
DECLARATION OF TRUST OF
TRUST OF THE UNITED EFFORT PLAN

"BE IT HEREBY RESOLVED:"

"That ARTICLE III of the Declaration of Trust of THE UNITED EFFORT PLAN shall be amended to read as follows:

'John Y. Barlow, Trustee, shall be President of said association until incapacitated by removal, resignation or death, with powers, duties, authority, and rights to do all things necessary in assisting to carry out the purposes of said trust as hereinafter set out, or as in the future amended; and said Trustee, as President, upon being duly authorized by resolution of the Board of Trustees, is hereby empowered to execute all contracts, deeds, transfers, assignments, and other instruments to pass title to property and otherwise bind the trust estate, as may be deemed essential to the interest of the Trust; provided, however, that in the absence of the President, or in the event of his inability to act through sickness or otherwise, the Vice-President may act in such capacity; such instruments also being signed by the Secretary or Assistant Secretary in attestation, with the seal of the association impressed thereon.'

"That the third paragraph of ARTICLE XII, which paragraph now begins 'The proceeds arising from the operations, etc.,' of said Declaration of Trust shall be amended to read as follows:

'The trust is designated a non-profit organization. The proceeds arising from the operation of the trust estate shall be

used by the Trustees for the performance of this Trust as herein provided, and any profits arising from the conduct of the business shall become part of the corpus of the trust fund. From time to time the said trustees may make a division of the trust fund or property as may by them be deemed advisable, to individual members of the Trust, or all of them, strictly in accordance with their just wants and needs as determined by the said trustees; and provided further, that the Trustees may render needed assistance to non-members of the Trust when deemed wise by them.'

"That ARTICLE XIII of said Declaration of Trust shall be amended to read as follows:"

'This Trust shall continue for one hundred years from date hereof, but may be terminated sooner by the Trustees, if they deem it advisable so to do, in the best interest of the trust estate and the members thereof.'

"AND BE IT FURTHER RESOLVED that the Secretary or Assistant Secretary be hereby authorized and instructed to file a certified copy of this resolution adopting those amendments in their offices of the Recorders in the respective counties in which the original Declaration of Trust are or may hereafter be recorded."

STATE OF UTAH)
:ss
COUNTY OF SALT LAKE)

I, Rulon T. Jeffs, Trustee and Assistant Secretary of THE UNITED EFFORT PLAN, a common law trust, having its principal office in Salt Lake City, Utah, being sworn, depose and say that the above is a true and correct copy of a resolution adopted by unanimous vote of the Board of Trustees as a meeting duly held on April 6, 1946; and the same appears of record in the minutes of said meeting.

s/ Rulon T. Jeffs

Assistant Secretary

Subscribed and sworn to before me this 10th day of April, 1946.

s/ Leone Erickson